

Appeal-983/2004

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.


Execution Petition No.608/2022 Saad Akbar Petitioner.

VERSUS

Government of Khyber Pakhtunkhwa & Others.....Respondents.

INDEX

S.No	Description	Annexure	Pages
1.	Objection Petition U/S-47	A	01-02
2.	Affidavit	B	03
3.	Execution Petition No.608	C	04-07
4.	Service Tribunal, Peshawar Judgement Datet:14.09.2021	D	08-12
5.	Summary for approval to Chief Minister.	E	13-21
6.	Law Department Ist opinion	F	22
7.	Law Department Iist opinion	G	23
8.	Order Sheet	H	24


Superintendent (Litigation)
For Director General
Mines & Minerals
Khyber Pakhtunkhwa, Peshawar

Superintendent (Litigation)
Director General Mines &
Minerals Khyber Pakhtunkhwa

N.D - 28/09/22

Peshawar.

A

15

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

Execution Petition No.608/2022

Saad Akbar

Versus

Appl - 983-2004
**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 7899

Dated 26-07-23

The Government of KPK, Through Chief Secretary KPK, &
Others.

**OBJECTION PETITION U/S 47 CPC 1908, ON BEHALF
OF THE RESPONDENTS IN THE EXECUTION PETITION
NO.608/2022.**

Respectfully Sheweth,

- i. That the subject Execution proceedings are pending disposal before this Hon'ble Tribunal wherein on the previous date of hearing i.e. 23.01.2023, this Hon'ble Tribunal was pleased to direct the respondents to submit implementation report of the order dated 14.09.2021.
- ii. That the respondent feels aggrieved about the Order dated 23.01.2023 and prays for its vacation on the following grounds amongst others;

GROUND:

1. That the impugned order dated 23.01.2023, is contrary to law and facts and same has been passed without taking into account the true facts of the case.
2. That true facts were not brought before this Hon'ble Service Tribunal through the factum of locus standi of the petitioner in the execution petition as he is not a

civil servant and as such cannot file any execution petition before this Hon'ble Tribunal. Hence, the order dated 23.01.2023 directing the respondents to implement the initial order dated 14.09.2021 is liable to be vacated.

- 3. That this Hon'ble Tribunal has also failed to appreciate that it had no jurisdiction over the issue brought before it by the petitioner.
- 4. That it is worth submitting that CPLA No.695-P/2021 is also pending before the August Supreme Court against the judgment dated 14.09.2021 passed by this Hon'ble Tribunal in which no date of hearing has yet been fixed.

It is, therefore, prayed that on acceptance of the instant Objection Petition, this Hon'ble Tribunal may be pleased to re-call/set aside its order dated 23.01.2023.

Respondents

Through

The Chief Minister,
Khyber Pakhtunkhwa,
Peshawar.

The Chief Secretary,
Govt of Khyber
Pakhtunkhwa,
Peshawar.

The Secretary,
Minerals Development,
Department, Khyber
Pakhtunkhwa,
Peshawar.

The Director General,
Mines & Minerals,
Khyber Pakhtunkhwa,
Peshawar.

SECRETARY
to Govt of Khyber Pakhtunkhwa
Minerals Dev: Deptt:

B

3

BEFORE THE SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No.608/2022

Saad Akbar.....Petitioner.


VERSUS

Government of Khyber Pakhtunkhwa & Others.....Respondents.

AFIDAVIT

I, Said Muhammad Superintendent (Litigation) BS-17 of Directorate General Mines and Minerals do hereby solemnly affirm and declare that the contents of the accompanying parawise reply is true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-part nor their defense have been struck off.

DEPONENTS


Superintendent (Litigation)
For Director General
Mines & Minerals (BPS-17)
Khyber Pakhtunkhwa Peshawar

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Cell No.0306-5680362

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

SP
Appeal No. EP No. 608 of 20 22
Saad Akbar Appellant/Petitioner

Through Chief Secy Versus Secy Respondent
Respondent No. (4)

Notice to: - DG Mines & Minerals, KP Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 27/10/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you.

Office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 24th

Day of Oct 20 22

For Impl-ment-
Report

AJ. Aduni
m r m

Registrar:
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

14393

25-10-22

Alex
SP

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

Execution Petition No. 608 /2022
In Service Appeal No.983/2004

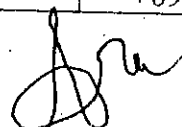
Saad Akbar, . . .

V/S


Mines & Mineral Deptt:

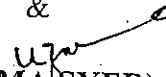
INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-08
3.	Vakalat Nama.	-----	.09

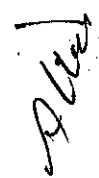


PETITIONER
Saad Akbar

THROUGH:


SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

&

(UZMA SYED)
ADVOCATE, PESHAWAR

Cell No: 0306-5109438



Superintendent (G.S-171)
Directorate of Mines &
Mazraa Khyber Pakhtunkhwa

(1) 6

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

Execution Petition No. _____/2022
In Service Appeal No.983/2004

Saad Akbar S/o Appellant Namely Late Muhammad Akbar Khan Ex-Deputy
Director, Mineral Department, NWFP Peshawar.
R/o H.NO 173, Street, Sector-J1, Phase-2, Hayatabad, Peshawar.

petitioner

VERSUS

1. The Govt of KP Through Chief Secretary Govt of KP, Peshawar.
2. The Chief Secretary Govt of KP, Peshawar.
3. The Secretary, Industries commerce, Mineral Development, Labour
Technical Education, Deptt, KP , Peshawar.
4. The Director General Mines & Mineral, KP Peshawar.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 14-09-2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

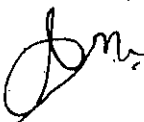
1. That the applicant/Petitioner filed Service Appeal No. 14-09-2021
against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal
on 14-09-2021. The Honorable Tribunal is kind enough to accept
the appeal vide judgment dated 22-11-2021 as prayed for. It is
added that due to death of the appellant during pendency of appeal,
his posthumous re-instatement into service will be ordered and he
will be treated to have died during service. (Copy of judgment is
attached as Annexure-A).

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S/20

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KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR
14/09/2021

- 7
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 14-09-2021.
 4. That the respondent totally violated the judgment of Hon'able Service 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 respondents are legally bound to implemented the same in letter and spirit.
 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 14-09-2021 this august Tribunal in letter and spirit. Further be directed to modify the order dated 17/02/2022 as per judgment. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.


PETITIONER
Saad Akbar

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

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


A Khan
S Khan
Stamp: [Illegible]

Amru-J

⑥

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.983/2004



Date of Institution ... 01.12.2004
Date of Decision ... 14.09.2021

Mohammad Akbar Khan S/O Shah Jehan Khan, Ex- Deputy Director, Mineral Department N.W.F.P, Peshawar R/O H.No.173, Street No.6, Sector-J1, Phase-2, Hayatabad, Peshawar.

(Appellant)

VERSUS

The Chief Minister Khyber Pakhtunkhwa, Chief Minister's House, Peshawar and three others.

(Respondents)

Saadullah Khan Marwat & Arbab Saiful Kamal, Advocates

... For Appellant.


Asif Masood Ali Shah, Deputy District Attorney

... For Respondents.

AHMAD SULTAN TAREEN
ROZINA REHMAN

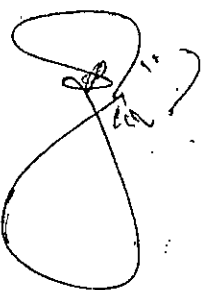
... CHAIRMAN
... MEMBER (J)

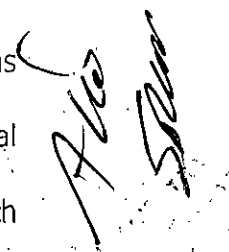
ATTESTED


AHMAD SULTAN TAREEN
Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

ROZINA REHMAN, MEMBER (J): Appellant was the employee of the respondent Department. At the relevant time, he was holding the post of Deputy Director Mineral when he was implicated in a NAB case vide Reference No.6/2002 as a result of which, he was convicted by the Accountability Court, Peshawar. He filed appeal against the said conviction before the Appellate Court which suspended the sentence of payment of fine and as the Appellate Court was having no jurisdiction to suspend the sentence of




AHMAD SULTAN TAREEN
Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4)

imprisonment, therefore, he filed writ petition in the High Court which was allowed and he was released on bail. Show cause was served upon the appellant and he was awarded major penalty of dismissal from service. He filed departmental appeal and a representation before the Governor but none of these petitions were disposed of within the statutory period, therefore, instant service appeal was filed.

2. We have heard Saadullah Khan Marwat Advocate appearing on behalf of appellant and Asif Masood Ali Shah learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Learned counsel for appellant contended that the appellant died during pendency of the instant service appeal and that the matter in issue relates to the survival of the right to sue following the death of a civil servant. He submitted that appeal of decedent on a matter relating to some terms and conditions of service was undoubtedly pending before this Tribunal at the time of his death and his legal heirs had filed an application for bringing on record legal heirs of the appellant in the instant service appeal. This application seeking impleadment of all the legal heirs of the appellant has already been allowed by this Tribunal, he, therefore, contended that the appellant was not treated in accordance with law and rules and they acted in violation of Article-4 & 25 of Constitution of Islamic Republic of Pakistan, 1973. He submitted that the appellant was acquitted in the NAB case by the august Supreme Court of Pakistan and in this regard, judgment of the august Court dated 13.6.2019 was produced

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[Handwritten Signature]

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(8)

and is placed on file vide which appeal was allowed, conviction and sentence of the appellant was set aside and he was acquitted of the charge by extending the benefit of doubt to him. He submitted that the departmental proceedings were initiated only on the basis of criminal charge which was not subsequently proved and resulted in acquittal, therefore, the impugned order is without lawful authority and not sustainable. Reliance was placed on P.L.D 2003 187; 2015 P.L.C (C.S) 1442 and 2006 S.C.M.R 1287.

4. Conversely learned Deputy District Attorney submitted that appellant was holding the post of Deputy Director Minerals in the Directorate of Mines & Minerals and was arrested by the NAB authorities. He was awarded the punishment to undergo rigorous imprisonment for two years and pay fine of Rs.2,565,000/-. He contended that proper show cause notice was served upon appellant and that on receipt of the reply of the show cause, the competent authority after considering the charges and evidence on record, held the appellant guilty of the charges of corruption against him and awarded major penalty of dismissal from service w.e.f 22.04.2004 i.e. the date of decision of the National Accountability Court U/S 3 of the N.W.F.P Removal From Service (Special Powers) Ordinance, 2000 and that the appellant was treated in accordance with law and rules.

5. From the record, it is evident that Muhammad Akbar Khan, appellant was holding the post of Deputy Director Mineral in the Mines & Minerals Department Khyber Pakhtunkhwa. He was arrested by the NAB authorities on 27.07.2002. He was tried by Accountability Court in connection with Reference No.6 of 2002 and vide judgment dated

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Alles
S. Khan

22.04.2004, he was convicted for an offence U/S 9 read with Section-10 of the National Accountability Ordinance, 1999 and was sentenced to rigorous imprisonment for two years and ^{to} pay a fine of Rs. 2,565,000/-. It was also ordered that the amounts in his bank accounts were to be forfeited and the Prize Bonds recovered from his custody were to be encashed and the amount so recovered were to be adjusted towards the fine. The appellant challenged his conviction and sentence before the High Court through an appeal which was partly allowed; his conviction recorded by the Trial Court was upheld and his sentence of imprisonment was reduced to the period of imprisonment already undergone by him. The High Court had, however, upheld the remaining sentences passed against the appellant. He, therefore, filed appeal before the august Supreme Court of Pakistan and vide judgment of the august Supreme Court of Pakistan dated 13.06.2019, appellant was acquitted of the charge by extending the benefit of doubt to him. As per record, show cause was issued under the Khyber Pakhtunkhwa Removal From Service (Special Powers) Ordinance, 2000 and as the appellant had been convicted and sentenced by court of Law to imprisonment and fine on the charges of corruption, therefore, order of dismissal was passed by the competent authority in view of Clause(a) of Subsection-(2) of Section-3A of the Khyber Pakhtunkhwa Removal From Service (Special Powers) Ordinance, 2000 and he was dismissed from service w.e.f the date of his conviction by the court of Law.

6. As discussed above that the departmental proceedings were initiated only on the basis of criminal charge in view of the Clause(a)

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of Subsection-(2) of Section-3A of the Khyber Pakhtunkhwa Removal From Service (Special Powers) Ordinance, 2000 which was not subsequently proved and resulted in acquittal. It has been held by the superior fora that all the acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Involvement of the appellant in the criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared, therefore, his acquittal, made him re-emerge as fit and proper person entitled him to continue with his service.

7. For what has been discussed above, we consider that the appeal in hand merits acceptance. It is, therefore, allowed as prayed for.

8. Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
14.09.2021

(Signature)
(Ahmad Sultan Tareen)
Chairman

(Signature)
(Rozina Rehman)
Member (J)

(Signature)
(Signature)

Date of Presentation of Application 25/10/21
 Number of Words 2000
 Copying Fee 22/-
 Urgent 22/-
 Date of Completion of Copy 08/11/21
 Date of Delivery of Copy 08/11/21

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



E
Most Immediate/ Court matters

13

**Government of
Khyber Pakhtunkhwa
Minerals Development Department**

No.SO(E)/MDD/2-17/Retirement/2023 / 7503-07
Dated Peshawar. 23.05.2023

To

The Secretary to,
Govt. of Khyber Pakhtunkhwa,
Establishment Department.

Subject: **EXECUTION PETITION NO.608/2022 IN SERVICE APPEAL NO.983/2004
TITLED MUHAMAMD AKBAR KHAN GANDAPUR V/S GOVERNMENT
OF KHYBER PAKHTUNKHWA.**

Dear Sir.

I am directed to state that a summary to Chief Minister Khyber Pakhtunkhwa in the subject case regarding implementation of the judgment of the Hon'ble Service Tribunal in Service Appeal No. 983/2004 was moved on 02.05.2023 for approval, which on one hand is still awaited: while on the other hand, the Service Tribunal, vide order sheet dated 08.05.2023 (copy enclosed), has given last opportunity for submitting the implementation report in the case otherwise on failure, the salaries of all the respondents would be stopped. The next hearing date in the instant case is **09.06.2023**.

2. In view of the above, I am, therefore, directed to requested that the Section concerned in Establishment Department may be directed to process the case summary for its early approval by the Chief Minister, being competent authority, so that implementation report could be presented before the court on the above hearing date, please.

Yours faithfully,

Gausontti
Section Officer (Estt:)

24-5-23
Encls: As Above.

Endst: No & Date even:

Copy is forwarded to the:

1. Section Officer (O&M) for similar necessary action.
2. P.S to Principal Secretary to Chief Minister, Khyber Pakhtunkhwa for information, please.
3. P.S to Secretary, Minerals Development Department .
4. Assistant Director (Admin) Directorate General of Mines & Minerals w.r.t your letter No.10174/DGMM/Admin: EP No.608/2022 dated 15.05.2023, with the directions to pursue the case being court matter.



Gausontti
Section Officer (Estt:)

Alic
S. Khan
Sub-Principal (Ops. 17)
Directorate General of Mines & Minerals
Khyber Pakhtunkhwa



**Government of Khyber Pakhtunkhwa
Minerals Development Department**

14

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: - **EXECUTION PETITION NO.608/2022 IN SERVICE APPEAL NO.983/2004 TITLED MUHAMMAD AKBAR KHAN GANDAPUR V/S GOVERNMENT OF KHYBER PAKHTUNKHWA.**

On the charges of corruption and corrupt practices one Muhammad Akbar Khan (Late), Ex-Deputy Director Minerals (BS-18), Directorate General of Mines & Minerals, was arrested by the National Accountability Bureau (NAB) on 24.07.2002 (**Annex-I**), and was trialed in the Accountability Court No.01 Peshawar. The Trial Court imposed him penalty of imprisonment for 02-years as well as a fine of Rs.2564266/- vide judgment dated 22.04.2004 (**Annex-II**).

2. It is added that in light of above penalties, a Departmental proceeding was also initiated against the above named late officer and a major penalty of Dismissal from Service was imposed upon him by the Competent Authority vide order dated 04.09.2004 (**Annex-III**).

3. It may also be added that the above named late penalized officer had challenged the decision of Accountability Court No.01 Peshawar as well as decision of Departmental proceeding in the different courts of law, details given in the below mention table:-

S.#	NATURE OF DECISION TAKEN BY THE COURT CONCERNED	NAME OF THE COURT IN WHICH DECISION CHALLENGED
1.	i. Rigorous imprisonment 02-years ii. Fine of Rs.2564266/- (by the Accountability Court No.01 Peshawar reflected at Annex-II above)	Peshawar High Court, Peshawar
2.	Peshawar High Court Peshawar upheld the conviction and fine imposed by the Trial Court and sentence of imprisonment was reduced to the period of imprisonment already undergone (Annex-IV)	Supreme Court of Pakistan.
3.	Supreme Court of Pakistan decided to extend the benefit of doubt to the appellant. The conviction and sentenced of the appellant are set-aside and he is acquitted of the charge by extending the benefit of doubt to him (Annex-V).	
4.	Departmental proceeding i.e. major penalty of Dismissal from Service by the Competent Authority (reflected at Annex-III above)	Khyber Pakhtunkhwa Service Tribunal in the year 2004.
5.	Khyber Pakhtunkhwa Service Tribunal through its judgment dated 14.09.2021 decided that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service (Annex-VI)	CPLA against the decision of Service Tribunal has been filed by the Department which can be seen at (Annex-VII)

Handwritten signature and stamp

Minerals Dev. Dept. (MPK)
Secy: Diary No. 91
Date: 18-04-23

minerals-17-84-00011

4. Pursuance to the Khyber Pakhtunkhwa Service Tribunal decision dated 14.09.2021 and subsequent hearing upon Execution Petition held on 22.03.2023 (Annex-VIII), last opportunity was given to the Department for implementation report, the case was taken up with the Law Department for advice/ opinion. The Law Department advised that the judgment of the Khyber Pakhtunkhwa Service Tribunal may be conditionally implemented i.e. subject to the final decision of the Supreme Court of Pakistan with further addition that Administrative Department may endeavor to obtain stay/suspension order of the impugned judgment from the august Supreme Court of Pakistan vide (Annex-IX & X respectively). So far obtaining stay/ suspension is concerned in the case, the requisite application through advocate-on-record has already been submitted in the Supreme Court of Pakistan, which already shown at Annex-VII.

5. In light of the above, the Chief Minister Khyber Pakhtunkhwa in Terms of Rule-4(1)(a) of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989, being the Competent Authority, is requested to accord approval to implement the decision of the Khyber Pakhtunkhwa Service Tribunal conditionally i.e. subject to the final decision of the Supreme Court of Pakistan.

6. Approval of the Chief Minister, Khyber Pakhtunkhwa is solicited, please.

(Hameed Ullah Shah)
Secretary Minerals Dev; Department

A. G. Gafar 19.4.23

Minister for Minerals Development Department,
Khyber Pakhtunkhwa

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister
Khyber Pakhtunkhwa.

P. T. O

7. Summary for Chief Minister, Khyber Pakhtunkhwa moved by Minerals Development Department regarding implementation of the Khyber Pakhtunkhwa Service Tribunal Judgment dated 19-04-2021 has been examined.

8. Penalty of imprisonment for 02 years as well as fine of Rs. 2564266/- was imposed upon Muhammad Akbar Khan (late), Ex-Deputy Director Minerals (BS-18) of Directorate General of Mines & Minerals on account of corruption by the Accountability Court No.1, Peshawar (Annex-II). Subsequently, departmental proceedings were initiated against the accused officer and a major penalty of "Dismissal from Service" was imposed upon him by the competent authority (Annex-III).

9. The accused officer challenged the decision of Accountability Court as well as departmental proceedings. The Khyber Pakhtunkhwa Service Tribunal vide its judgment dated 14-09-2021 decided that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service is ordered and he will be treated to have died during service (Annex-VI). The Administrative Department filed CPLA against the said judgment (Annex-VII), however, the Tribunal upon hearing of the Execution Petition vide order sheet dated 22-03-2023 granted last opportunity to the Department to implement the judgment in letter & spirit and submit proper implementation report on the next date i.e 08-05-2023, failing which coercive measures will be taken (Annex-VIII).

10. Consequently, the Administrative Department took up the case with Law Department for advice/opinion which advised that the judgment of the Tribunal may be conditionally implemented i.e subject to final decision of the Supreme Court of Pakistan with further addition that the Administrative Department may endeavor to obtain stay/suspension order of the impugned judgment from the august Supreme Court of Pakistan (Annex-X). Therefore, in order to implement decision of the Tribunal, the Administrative Department vide Para-5 ante has requested to accord approval for issuance of conditional notification in respect of the accused officer.

11. In view of the opinion of Law Department at (Annex-X), proposal of the Administrative Department contained in Para-5 of the Summary may be submitted for appropriate orders of the Hon'ble Chief Minister, Khyber Pakhtunkhwa.

(Akhtar Saeed Turk)
Secretary Establishment
10 May, 2023

Chief Secretary, Khyber Pakhtunkhwa

12. Pl examine, seek views of AG, and your views and re-submit.

Secretary Law.

N.O.A.

17/5/2023.
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa



Government of Khyber Pakhtunkhwa
Minerals Development Department

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: -

EXECUTION PETITION NO.608/2022 IN SERVICE APPEAL NO.983/2004
TITLED MUHAMAMD AKBAR KHAN GANDAPUR V/S GOVERNMENT OF
KHYBER PAKHTUNKHWA.

13. Reference para 12, LAG is requested
to add views, plz.

LAG

Ms Shakeela Asst. Ag.

[Signature]
Secretary
Law, Parliament and Human Rights Department
Govt. of Khyber Pakhtunkhwa
17/15/2023
[Signature]
Advocate General
Khyber Pakhtunkhwa
Peshawar

14. my views are endorsed at
para - 15.

[Signature]
Assistant Advocate General
Khyber Pakhtunkhwa
Peshawar

[Signature]
[Signature]
Director
Minerals Development Department
Government of Khyber Pakhtunkhwa
Peshawar



LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

18

SUBJECT: EXECUTION PETITION NO. 608/2022 IN SERVICE APPEAL NO. 983/2004 TITLED MUHAMMAD AKBAR KHAN GANDAPUR V/S GOVERNMENT OF KHYBER PAKHTUNKHWA.

Reference Para-12 of the Summary:

18. The instant case has been examined. The view of Advocate General, Khyber Pakhtunkhwa may be perused at Para-16 of the Summary. Law Department is of the view that it would be appropriate that the Administrative Department may approach the Law Officer in Khyber Pakhtunkhwa Service Tribunal to file an objection petition in terms of section 47 of the Code of Civil Procedure, 1908 (Annex: "XIII") on the principle laid down by the Supreme Court of Pakistan in the judgments (Annex: "XI" and "XII"), which provides the right of appeal to a civil servant and there is no provision in the Khyber Pakhtunkhwa Service Tribunal Act, 1974 to provide any remedy to the successor-in-interest of the civil servant.

[Signature]
26/5/2023
(SHAGUFTA NAVEED)
SECRETARY LAW

CHIEF SECRETARY

19. Please discuss urgently.

Secretary Law.

[Signature]
31/5/2023

CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

20. Dismissal with Secretary Law. P. have ~
fresh discussion with AG and then re-submit.

Secretary Law.

21. LAG is requested to add
Views on para 18 of the Summary, plz.

LAG

n.p.

[Signature]
31/5/2023

[Signature]
AG
GOVERNMENT OF KHYBER PAKHTUNKHWA
CHIEF SECRETARY
LAHORE

[Signature]
31/5



OFFICE OF ADVOCATE GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR

No. 25585 /AG

dated Peshawar, the 02/06/2023

Address: High Court Building, Peshawar. Exchange No. 9213833
Tel. No. 091-9210119 Fax No. 091-9210270

22. As per latest view of Supreme Court of Pakistan returned in a case titled as Azra Bibi Versus General Manager, Personnel (CPO), Pakistan Railways HP, Lahore reported in 2023 SCMR 46, the Hon'able Supreme Court has settled the law on the subject wherein, inter alia, it has been held that:

There is no scope or prospect for filing any appeal before the Service Tribunal under section 4 of the Service Tribunals Act, 1973 other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant.

Any relief which is personal to the deceased civil servant cannot be granted after his death but the Service Tribunal after taking into consideration the facts and circumstances of each case separately and to alleviate the miseries of the bereaved family, may continue the pending appeal only to examine and decide whether any monetary relief such as lawful pending dues are payable or if any lawful claim lodged by the civil servant in his life time which is subject matter of appeal in which cause of action survives despite his death including pensionary benefits, gratuity or provident fund etc. if permissible and applicable under the law and rules to the deceased. However, the facts of the present case are quite distinguishable and the Tribunal could not entertain the appeal which was originally filed by the widow herself after the death of civil servant and it was not a case of impleading the legal heirs in any pending appeal to ensure the payment of full and final settlement of dues. Petition for leave to appeal was dismissed and leave was refused.

Copy of Judgment is enclosed for reference & record.

AMIR JAVED
Advocate-General,
Khyber Pakhtunkhwa
Peshawar.

Adviser
[Stamp: Office of Advocate General, Khyber Pakhtunkhwa, Peshawar]

Secretary Law

20

2023 SC MR 46

[Supreme Court of Pakistan]

Present: Sardar Tariq Masood, Amin-ud-Din Khan and Muhammad Ali Mazhar, JJ

AZRA BIBI---Petitioner

Versus

GENERAL MANAGER, PERSONNEL (CPO), PAKISTAN RAILWAYS HQ, LAHORE and others---Respondents

Civil Petition No. 2628 of 2019, decided on 10th October, 2022.

(Against the judgment dated 27.05.2019 passed by Federal Service Tribunal, Islamabad in Appeal No. 2054(R)CS/2018)

Civil Servants Act (LXXI of 1973)---

---S. 2(b)---Service Tribunals Act (LXX of 1973), Ss. 2(a) & 4---Appeal filed by legal heirs of deceased civil servant---Maintainability---Perusal of Civil Servants Act, 1973 and Service Tribunals Act, 1973 showed that there is no scope or prospect for filing any appeal before the Service Tribunal other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant---Any relief which is personal to the deceased civil servant cannot be granted after his death but the Service Tribunal after taking into consideration the facts and circumstances of each case separately and to alleviate the miseries of the bereaved family, may continue the pending appeal only to examine and decide whether any monetary relief such as lawful pending dues are payable or if any lawful claim lodged by the civil servant in his life time which is subject matter of appeal in which cause of action survives despite his death including pensionary benefits, gratuity or provident fund etc., if permissible and applicable under the law and rules to the deceased.

Record showed that the deceased civil servant died on 30.07.2017, and the first application/representation was moved before the department by his widow/petitioner on 21.05.2018, which was obviously after the demise of her husband. Nothing was placed on record to show that the deceased, ever challenged his regularization with immediate effect, rather than from the date of his initial appointment. The claim of regularization, rightly or wrongly, from the date of initial appointment was a cause of action that could only be agitated by the deceased in his lifetime, but no such claim or legal proceedings were set into motion by him which showed that the deceased was satisfied and not interested in lodging any such claim and after his death.

There is no scope or prospect for filing any appeal before the Service Tribunal under section 4 of the Service Tribunals Act, 1973 other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant.

In the present case had the appeal been filed by the deceased and during its pendency he passed away, then subject to the Tribunal first deciding the question whether the cause of action did survive despite death, the widow/petitioner could have moved the application for impleadment in the Tribunal as if the Tribunal had not become functus officio.

Any relief which is personal to the deceased civil servant cannot be granted after his death but the Service Tribunal after taking into consideration the facts and circumstances of each case separately and to alleviate the miseries of the bereaved family, may continue the pending appeal only to examine and decide whether any monetary relief such as lawful pending dues are payable or if any lawful claim lodged by the civil servant in his life time which is subject matter of appeal in which cause of action survives despite his death including pensionary benefits, gratuity or provident fund etc. if permissible and applicable under the law and rules to the deceased. However, the facts of the present case are quite distinguishable and the Tribunal could not entertain the appeal which was originally filed by the widow herself after the death of civil servant and it was not a case of impleading the legal heirs in any pending appeal to ensure the payment of full and final settlement of dues. Petition for leave to appeal was dismissed and leave was refused.

Muhammad Sharif Janjua, Advocate-on-Record for Petitioner along with Mrs. Azra Bibi in person.

Nemo for the Respondents.

Date of hearing: 10th October, 2022.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.---This Civil Petition for leave to appeal is brought to challenge the judgment passed by the learned Federal Service Tribunal, Islamabad ("Tribunal") on 27.05.2019 in Service Appeal No.2054(R)CS 2018. whereby the appeal filed by the petitioner was dismissed.

2. To put it in a nutshell, the petitioner, being the widow of Fateh Khan, approached the learned Tribunal by means of the aforesaid appeal with the grievance that her husband joined Pakistan Railways as Gangman on 04.10.1990, and was regularized in service on 14.01.2000 with immediate effect. She prayed to the department, as well as the learned Tribunal that the services of her deceased husband be regularized with retrospective effect from the date of his initial appointment i.e. on 04.10.1990. The record reflects that the husband of the petitioner died on 30.07.2017, and the first application/representation was moved before the department by the petitioner on 21.05.2018, which is obviously after the demise of her husband. Nothing was placed on record to show that the deceased, Fateh Khan, ever challenged his regularization with immediate effect, rather than from the date of his initial

Judgement

appointment.

3. All the more so, the claim of regularization, rightly or wrongly, from the date of initial appointment was a cause of action that could only be agitated by the deceased husband in his lifetime, but no such claim or legal proceedings were set into motion by him which shows that the deceased was satisfied and not interested in lodging any such claim and after his death, this cause of action does not survive to be agitated by his legal heirs. According to section 2(b) (Definitions clause) of the Civil Servants Act, 1973, a "civil servant" means a person who is a member of All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does include (i) a person who is on deputation to the Federation from any Province or other authority; (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or (iii) a person who is "worker" or "workman" as defined in the Factories Act, 1934, or the Workman's Compensation Act, 1923. Whereas under section 2(a) of the Service Tribunals Act, 1973, a "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. The provision for filing an appeal to the Tribunal is provided under section 4 of the Service Tribunals Act, 1973 by means of which civil servants aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order, file an appeal to the Tribunal. The above provisions unequivocally interpret and elucidate that there is no scope or prospect for filing any appeal before the Service Tribunal under section 4 other than by the civil servant himself, and the law does not permit the legal heirs to knock on the doors of the Service Tribunal after the death of the said civil servant.

4. We are sanguine to the legal maxim "actio personalis moritur cum persona" which is a legal turn of phrase of Latin origin. In the well-read literary connotation it means that the personal right to an action dies with the person. There are certain categories of legal proceedings or lawsuits in which the right to sue is personal and does not survive to the legal representatives and, as a consequence thereof, the proceedings are abated. In case of survival of the cause of action, according to the genres of the law, the legal representatives may be impleaded to continue the suit or other legal proceedings for which relevant provisions are mentioned under Order XXII, Rule 1, C.P.C. that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives and further modalities are mentioned in succeeding rules, how to implead the legal heirs in case of death of one of several plaintiffs or the sole plaintiff and in case of death of one of several defendants or of the sole defendant.

5. The petitioner in this case did not apply to the learned Tribunal for impleading legal heirs on the notion that cause of action survives despite death, rather the appeal was filed much after the death of her husband who did not opt to initiate any legal proceedings within his lifetime. Had the appeal been filed by the husband and during pendency he passed away, then subject to first deciding an elementary question by the Tribunal in the set of circumstances of the case whether the cause of action does survive despite death, then unambiguously, the petitioner could have moved the application for impleadment in the Tribunal as if the Tribunal had not become functus officio. For instance, if the service appeal is filed against the dismissal of service or for compulsory retirement, and death of petitioner occurred during the pendency of appeal, then obviously the main relief of reinstatement in service, which was personal to the appellant cannot be granted after his death but the learned Service Tribunal after taking into consideration the facts and circumstances of each case separately and to alleviate the miseries of the bereaved family, may continue the pending appeal only to examine and decide whether any monetary relief such as lawful pending dues are payable or if any lawful claim lodged by the civil servant in his life time which is subject matter of appeal in which cause of action survives despite his death including pensionary benefits, gratuity or provident fund etc. if permissible and applicable under the law and rules to the deceased appellant. However, the facts of the present case are quite distinguishable wherein the Tribunal could not entertain the appeal which was originally filed by the widow herself after the death of civil servant and it was not a case of impleading the legal heirs in any pending appeal to ensure the payment of full and final settlement of dues.

6. The learned Tribunal has already considered all legal and factual aspects in the impugned judgment and to some extent also considered the representation of the petitioner being time barred, obviously for the reason that act of regularization was done in the year 2000 but no departmental appeal was filed within the specified period of limitation, and even the departmental appeal was filed by the widow and not by her husband during his lifetime.

7. As a result of the above discussion, the civil petition is dismissed and leave to appeal is refused.

MWA/A-47.SC

Petition dismissed.

Alto
Govt
 [Stamp]



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

NO. ALO(OP-I)/LD/15-2/2023/KC
DATED: PESH: THE 27TH MARCH, 2023

621
3073

To
The Secretary,
Government of Khyber Pakhtunkhwa
Minerals Development Department.

Mineral Dev. Dept.
New Bldg. No. 806
Date 27/3/23

Attention: Section Officer (Estt.)

Subject: EXECUTION PETITION NO.608/2022 IN SERVICE APPEAL NO.983/2004 TITLED MUHAMMAD AKBAR KHAN GANDAPUR V/S GOVERNMENT OF KHYBER PAKHTUNKHWA.

Dear Sir,

I am directed to refer to your Department's letter No.SO(E)MDD/2-17/Retirement/2023/2985-88, dated 07-03-2023, on the subject noted above and to state that the Khyber Pakhtunkhwa Service Tribunal vide its judgment dated 14-09-2021 in Service Appeal No.983/2004, held that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service. CPLA of the Government against the ibid judgment is pending in the Supreme Court of Pakistan and the Service Tribunal vide order sheet dated 21-02-2023 has granted last opportunity to submit implementation report.

2. Law Department is of the view that in terms of Order XX Rule-1 of Supreme Court Rules, 1980, the ibid judgment of Khyber Pakhtunkhwa Service Tribunal, may be conditionally implemented i.e. subject to the final decision of the Supreme Court of Pakistan.

Moreover, it is advisable that Administrative Department may endeavor to obtain stay/suspension order of the impugned judgment from the august Supreme Court of Pakistan.

"A"

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Disc (1)

Yours Faithfully,

Assistant Law Officer (Opinion-I)

Handwritten signatures and stamps

13/83

1st: of even No. & date.

Copy is forwarded for information to the:-

- 1. PS to Secretary, Law Department.
- 2. Master File.

Assistant Law Officer (Opinion-I)

Handwritten notes and signatures at the bottom left

Handwritten notes and stamps at the bottom center



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

SUBJECT: EXECUTION PETITION NO. 608/2022 IN SERVICE APPEAL NO. 983/2004 TITLED MUHAMMAD AKBAR KHAN GANDAPUR V/S GOVERNMENT OF KHYBER PAKHTUNKHWA.

Reference Para 25 of the Summary:

- 26. The case has been re-examined. That since misrepresentation as well as the element of want of jurisdiction, is apparent in the instant case, therefore, the Law Department is of the view that the Administrative Department may file an application under section 12 (2) Civil Procedure Code, 1908 against the Judgment of Service Tribunal dated 14.09.2021 in Service Appeal No. 983/2004 at "Annex-VI" in the Service Tribunal through the Law Officer concerned.
- 27. The Administrative Department is further advised to file an objection petition under section 47 of the Civil Procedure Code, 1908 in the pending Execution Petition No. 608/2022 at "Annex-VIII".

(Signature)
(SHAGUFTA NAVEED)
SECRETARY LAW

CHIEF SECRETARY

28. Administrative Department may be advised to proceed as advised by Law Department as para 26 + 27/s.

Shief Minister

29. As proposed in para 28 anti. *M. J. 26*
13/7/23

CS

(Signature)
7/11/23

A. U. S.
(Signature)
GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT

E.P. No. 608/2022

Isad Akbar vs Govt

24

18.07.2023

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

Representative of the respondents and learned Assistant Advocate General stated at the bar that department has submitted summary for approval of the Chief Minister. The said summary has reached on the table of Chief Minister Khyber Pakhtunkhwa. Respondents are directed to submit implementation report on the next date positively. Adjourned. To come up for implementation report on 21/08.2023 before S.B. P.P given to the parties.

SCANNED
KEYS
REMOVED

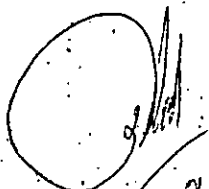
(Muhammad Akbar Khan)
Member (I)

Kamranul Kabir

21.08.2023

Learned counsel for the petitioner present. Mr. Sajid Anwar, Assistant alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present and sought adjournment. Adjourned. To come up for implementation report before the S.B on 28.09.2023. Parcha Peshi given to the parties.

DELIVERED
21



7.9.23

Assnt:

Naveem Amin

(Salah-Ud-Din)
Member (J)

