

18.05.2023

Junior of learned counsel for the appellant present. Syed Alamzeb Shah, ADEO alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

File to come up for alongwith connected Service Appeal No. 930/2020 on 04.08.2023 before D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)  
Member (E)




(Salah-ud-Din)  
Member (J)

\*kamronullah\*

4<sup>th</sup> August, 2023 1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Syed Alamzeb Shah, ADO (Lit) for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 04.12.2023 before the D.B. PP given to the parties.



(Fareeha Paul)  
Member (E)



(Rashida Bano)  
Member (J)

\*Kaleemullah

SCANNED  
KPST  
Peshawar

SCANNED  
KPST  
Peshawar

08<sup>th</sup> Feb, 2023

Junior of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Pajindakhel, Assistant Advocate General for the respondents present.

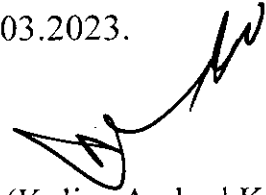
Junior of learned counsel for the appellant stated that similar appeals titled "Rahatullah etc Versus Education Department" have been fixed on 09.03.2023 before Principal Bench of this august Tribunal at Peshawar, therefore, let this appeal be fixed on the said date at Principal Bench.

Let it be fixed at Principal seat of this august Tribunal to see the nature of all the appeals at Peshawar for 09.03.2023.

SCANNED  
KPST  
Peshawar



(Salah-ud-Din)  
Member (J)  
Camp Court Swat



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat

09<sup>th</sup> March, 2023

Junior of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Pajindakhel, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant has proceeded to his native village due to some domestic engagement. Adjourned. To come up for arguments on 18.05.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar



(Salah-ud-Din)  
Member (J)




(Kalim Arshad Khan)  
Chairman

10<sup>th</sup> Nov, 2022

Due to public holiday on account of Allama Iqbal Day, the case is  
(Fareeha Paul) (Rozina Rehman)  
Member (E) Member (J)  
adjourned to 07.12.2022 for the same as before. (Camp Court Swat) (Camp Court Swat)

**SCANNED  
KPST  
Peshawar**

  
Reader

07.12.2022

Tour is hereby cancelled, therefore, the case is adjourned  
to 04.01.2023 for the same as before.

  
Reader

04.01.2023


Junior to counsel for the appellant present.


Muhammad Riaz Khan Paindakhel learned

Assistant Advocate General for respondents present.

Former made a request for adjournment on the  
ground that learned senior counsel for the appellant is  
busy in Hon'ble Peshawar High Court, Peshawar today.  
Adjourned. To come up for arguments on 08.02.2023  
before D.B at camp court, Swat.

**SCANNED  
KPST  
Peshawar**

  
(Fareeha Paul)  
Member (E)  
(Camp Court Swat)

  
(Rozina Rehman)  
Member (J)  
(Camp Court Swat)

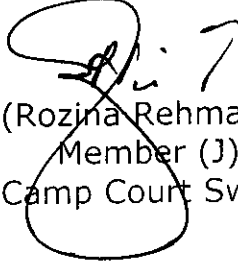
O R D E R  
04.10.2022


Learned counsel for the petitioner present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments on restoration application heard and record perused.

The Service Appeal bearing No. 278/2020 titled "Bacha Sherin Versus Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar and three others", was dismissed in default vide order dated 05.07.2022. According to learned counsel for the petitioner, he was busy in the august Peshawar High Court, Peshawar as well as Principal bench of this Tribunal at Peshawar, therefore, he could not appear before the Tribunal on the said date. The petitioner has submitted an application for restoration of appeal on 22.07.2022, which is well within time. The application for restoration of service appeal is supported by duly sworn affidavit. Law also favours adjudication on merit by avoiding technicalities.

The application in hand is, therefore, accepted and Service Appeal bearing No. 278/2020 stands restored on its original number. To come up for arguments on 09.11.2022 before the D.B at Camp Court Swat.

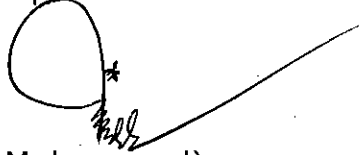
ANNOUNCED  
04.10.2022

  
(Rozina Rehman)  
Member (J)  
Camp Court Swat

  
(Salah-Ud-Din)  
Member (J)  
Camp Court Swat

05.09.2022

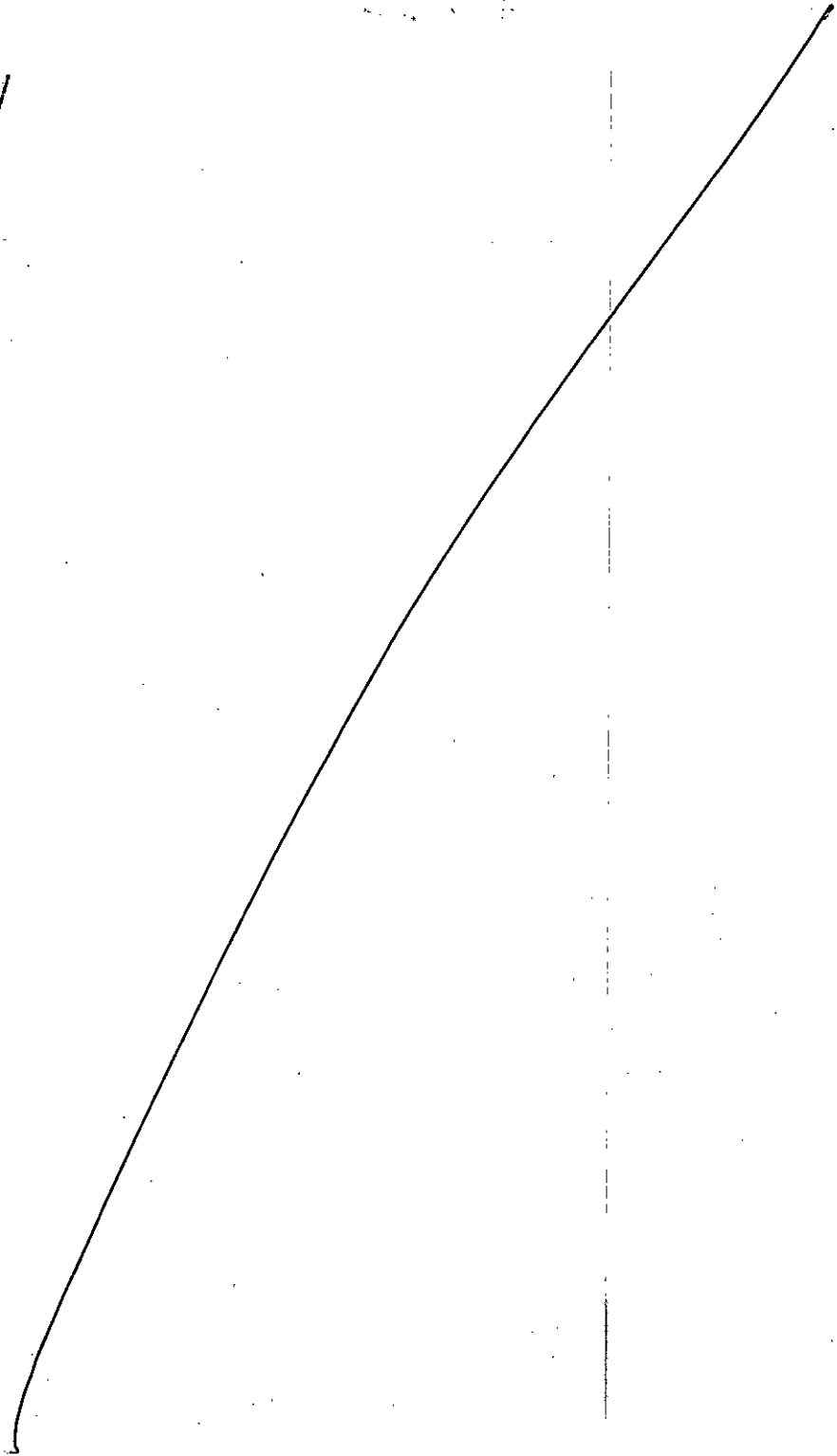
Clerk of learned counsel for the applicant present. Notice be issued to the respondents for submission of reply as well as arguments on restoration application on 04.10.2022 before the D.B at Camp Court Swat.



(Mian Muhammad)  
Member (Executive)  
Camp Court Swat



(Salah-Ud-Din)  
Member (Judicial)  
Camp Court Swat

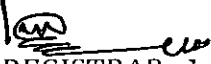


Form-A

FORM OF ORDER SHEET

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

Restoration Application No. 409 /2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.07.2022	<p>The application for restoration of appeal No. 278/2020 submitted today by Mr.Noor Muhammad Khattak Advocate. It is fixed for hearing before touring Division Bench at Swat on <u>5-9-22</u>. Original file be requisitioned. Notices to the applicant and his counsel be also issued for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR,**

*Restoration Appli. no. 409/2022*

**CM. NO. \_\_\_\_\_/2022**

**IN**

**APPEAL No. 278/2020**

**BACHA SHERIN**

**VS**

**EDUCATION DEPT.**

**INDEX**

<b>S. NO.</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE</b>
1.	Memo of application	.....	1
2.	Affidavit	.....	2
3.	Order dated 5-7-2022	<b>A</b>	3-4

*0334-5277323*

**APPELLANT**

**THROUGH:**

**NOOR MUHAMMAD KHATTAK  
ADVOCATE**

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

Restoration Appli. No. 409/2022

CM. NO. \_\_\_\_\_/2022

IN

APPEAL No. 278/2020

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 764

Dated 22/7/2022

**BACHA SHERIN**

**VS**

**EDUCATION DEPT.**

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

**R/SHEWETH:**

- 1- That the above titled service appeal was pending adjudication before this Honorable tribunal which was fixed on 05-07-2022.
- 2- That the counsel for the petitioner was busy in The Peshawar High Court at Peshawar as well as was engaged at principal bench of this honourable tribunal at Peshawar. That it is also worth mentioning that the subject appeals were not noted in the diary on that date.
- 3- That the mentioned service appeal was dismissed for non-prosecution vide order dated 05.07.2022. Copy of the order sheet 05.07.2022 attached as annexure .....A.
- 4- That as the matter pertaining in the instant appeal has not been decided on merit, therefore the mentioned service appeal may be restored for the sack of justice.
- 5- That there is no legal bar in restoring the mentioned appeal.

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

Dated:

PETITIONER/APPLICANT

Through:

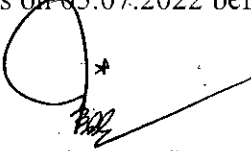
**NOOR MUHAMMAD KHATTAK**  
Advocate, Peshawar




07.06.2022

Appellant in person present. Mr. Kabirullah Khattak,  
learned Additional Advocate General for the respondents present.

Counsel are on strike. Adjourned. To come up for  
arguments on 05.07.2022 before D.B at camp court Swat.

  
(Mian Muhammad)  
Member (E)  
Camp Court Swat

  
(Kalim Arshad Khan)  
Chairman  
Camp Court Swat


05.07.2022


Nemo for appellant.

Noor Zaman Khan Khattak, learned District Attorney alongwith  
Nasim Khan Section Officer for respondents present.

Case was called time and again but neither the appellant nor  
his counsel turned up till rising of the Bench. Consequently, instant  
service appeal is hereby dismissed in default for non-prosecution.  
Parties are left to bear their own costs. File be consigned to the  
record room.

Announced.  
05.07.2022

  
(Fareeha Paul)  
Member(E)  
Camp Court, Swat

  
(Rozina Rehman)  
Member(J)  
Camp Court Swat

D

01.11.2021

Junior to counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 03.02.2022 before D.B. Respondents be put on notice to submit reply within 10 days in office.

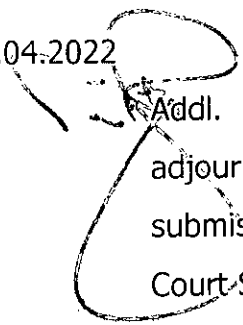
  
Chairman

03.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 15.04.2022 before S.B for the same.

  
Reader

15.04.2022

 Counsel for the appellant present. Mr. Kabirullah Khattak Addl. AG for respondents present and requested for adjournment. Request accepted. Last opportunity is granted for submission of written reply on 11.05.2022 before S.B at Camp Court-Swat.

  
Chairman

11.01.2021

Mr. Noor Muhammad Khattak, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of respondent No. 2 Mr. Naseeb Khan, Section Officer (Litigation), is also present.

Written reply on behalf of respondents not submitted despite last chance given in the preceding order sheet dated 19.11.2020, therefore, the appeal is adjourned to 08.04.2021 on which date file to come up for arguments before D.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

08.04.2021


Due to demise of Honorable Chairman  
The Tribunal is defunct, therefore the case is  
adjourned to 26.07.2021 for the same as before.

Reader

26.07.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 01.11.2021.

  
(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

05.08.2020

Mr. Noor Muhammad Khattak, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Mohibullah, Assistant are also present.

Representative of the department requested for time to furnish written reply/comments. Time is granted. File to come up for written reply/comments on 29.09.2020 before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER

29.09.2020

Junior to counsel for the appellant and Addl. AG alongwith Sajid Superintendent and Ahmad Hassan, Litigation Officer for the respondents present.

Representative of the respondents seeks further time to furnish reply/comments. Adjourned to 19.11.2020 on which date the requisite reply/comments shall be submitted without fail.

  
Chairman

19.11.2020

Junior to counsel for the appellant and Addl; AG present. No representative of respondents is available.

Learned AAG is required to contact the respondents and submit written reply/comments on 11.01.2021, as last chance.

  
Chairman

30.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 19.06.2020 before S.B.

  
Reader

19.06.2020

Appellant with counsel present.

Contends that appellant was initially appointed as PTC now PST as stop gap arrangement but his services were dispensed with in 1997. He then submitted an application for his reinstatement on promulgation of KP Sacked Employees Act, 2012 which was not considered. He, therefore, filed Writ Petition which was allowed and the appellant was appointed. His departmental appeal for fixation of pay was not responded. It was further submitted that in the light of Rule 2.3 of the West Pakistan Pension Rules, 1963, the appellant is entitled for the grant of pay fixation from the date of initial appointment.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Notice be issued to the respondents. To come up for written reply/comments on 05.08.2020 before S.B.

Appellant Deposited  
Security & Process Fee  
26/6/20

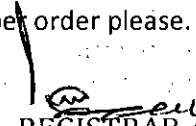
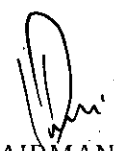
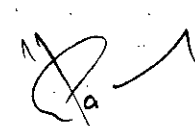
  
(Rozina Rehman)  
Member (J)

Form- A

FORM OF ORDER SHEET

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

Case No.- 278/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/01/2020	<p>The appeal of Mr. Bacha Sherin presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 09/01/2020</p>
2-	10/01/20	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>10/02/2020</u></p> <p> CHAIRMAN</p>
	10.02.2020	<p>Learned counsel for the appellant present. Heard.</p> <p>Learned counsel for the appellant could not demonstrate that the appellant can claim service back benefits under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. Learned counsel for the appellant seeks adjournment for proper assistance. Adjourn. To come up for preliminary hearing on 30.03.2020. Learned counsel for the appellant may also submit copy of the judgment in Writ Petition bearing No.3-M of 2014 dated 28.03.2014 on the next date fixed.</p> <p> Member</p>

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

APPEAL NO. 278 /2019

**BACHA SHERIN**

**VS**

**EDUCATION DEPTT:**

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5	Medical certificate	<b>D</b>	11.
6	Departmental appeal	<b>E</b>	12.
7	Vakalat nama	.....	13.

**APPELLANT**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK,**  
**ADVOCATE**

Flat No. 3, Upper Floor,  
Islamia Club Building,  
Khyber Bazar, Peshawar  
0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

APPEAL NO. 278 /2020

Diary No. 295

Dated 9/1/2020

Mr. Bacha Sherin, PST (BPS-12),  
GPS Jatgram warai, District Dir Upper.....Appellant

**VERSUS**

- 1- The Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Education Officer, District Dir Upper.

.....**RESPONDENTS**

**APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY IN  
BPS-12 w.e.f. 01-01-1996 I.E. FROM THE DATE OF INITIAL  
APPOINTMENT TO THE POST OF PST AND AGAINST NOT  
TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE  
APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY  
DAYS.**

**PRAYER:**

That on acceptance of this appeal the appellant may kindly be allowed/granted pay fixation w.e.f. 01-01-1996 with all back benefits. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

Filed to-day

**Brief facts giving rise to the present appeal are as under:**

Registrar

- 1- That the appellant was initially appointed in the respondent Department as PTC now PST vide order dated 01-01-1996 as stop gap arrangement. ( Copy of the appointment order is attached as annexure.....**A**)
- 2- That it is worth mentioning here, that in 1997 the services of the appellant along with others were dispensed with on the ground that their services were no more required to the Department.
- 3- That it is also worth mentioning, that on promulgation of KP Sacked Employee Act, 2012 appellant submitted an application for his reinstatement being covered under the said law but the same was not considered, hence the appellant filed writ petition no. 855/2016 before Peshawar high court Mingora Bench, which was

0-9/01/2020



allowed vide judgment dated 16/05/2017. Copy of judgment dated 16/05/2017 is attached as annexure ..... **B)**.

- 4- That the appellant was appointed as PST w.e.f. taking over charge in light of Peshawar high Court Dar-Ul-Qaza Bench Swat judgment vide order dated 16/05/2017. That in response the appellant submitted charge report and started his duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the appointment order dated and medical certificate are attached as annexure ..... **C & D)**.
- 5- That the appellant filed Departmental appeal before respondents for fixation of pay w.e.f. the date of his first appointment i.e. 01/01/1996 but the same has not been responded within stipulated period of ninety days. Copy of Departmental appeal is attached as annexure..... **E)**.
- 6- That feeling aggrieved and having no other remedy the appellant filed the instant appeal on following grounds inter alia.

**GROUND:**

- A- That the inaction of respondents by not allowing pay fixation to the appellant w.e.f. 01-01-1996 is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and mala fide manner by not allowing pay fixation to the appellant w.e.f. 01-01-1996 and as such the inaction of the respondents is violative of law and rules.
- D- That the inaction of the respondents is discriminatory and against the norms of natural justice, therefore not tenable in the eye of law.
- E- That under Article 38 (e) of the Constitution of Pakistan, 1973 state is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan, therefore in light of the above mentioned Article the appellant is fully entitled for the grant of pay fixation w.e.f. the date of initial appointment.
- F- That promulgation of Sacked Employee Act, 2012 established that dismissal of appellant along with others from services was against the law, hence the appellant is entitled to pay fixation from date of his first appointment.

G- That in light of Rule 2.3 of the West Pakistan, Pension Rules, 1963 the appellant is fully entitle for the grant of pay fixation from the date of initial appointment.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

**APPELLANT**

  
**BACHA KHAN**

**THOROUGH:**

  
**NOOR MOHAMMAD KHATTAK**

  
**MIR ZAMAN SAFI**

**&**

  
**SHAHZULLAH YOUSAFZAI**  
**ADVOCATES**

**OFFICE ORDER:-**

Consequent upon the non availability of trained PTC, in the constituency, Mr. Bacha Shireen S/O Mohammad Saeed Khan Village Jagram Tehsil & District Dir is hereby appointed on stop gap arrangements at GPS/MPS, Luqman Banda with effect from 1.03.1995 to 30.5.1996 at the pay scale of Rs. 1480/81/2695 subject to the following terms and conditions:-

1. Charge report should be submitted to all concerned.
2. Health & age certificate should be produced from the civil surgeon DIR at Timergara.
3. He may not be handed over the charge if his age exceeds 30 years or below 18 years.
4. Before handing over charge to him their original documents should be checked.

( FAZLE NAEEM KHAN)  
DISTT: EDUCATION OFFICER(M)  
PRY: DIR AT TIMARGARA.

OFFICE TO THE DISTT: EDUCATION OFFICER (M) PRY: DIR AT TIMERGARA.

Endst: No. 16-18/PED/ESTAB:/

dated Timergara the 1/1/1996

Copy forwarded to:-

OFFICE ORDER:-

Consequent upon the non availability of trained PTC in the constituency, Mr. bacha Shiraan, Mat: S/O Mohd Saeed Khan village, \_\_\_\_\_ Distt: Dir is hereby appointed as PTC, Tr: on stop gap arrangements at GPS/MPS, Luamanbunda, \_\_\_\_\_ with effect from 1.3.96 to 30.5.96 at the pay scale of Rs. 480-81/2695 subject to the following terms and conditions:-

1. Charge report should be submitted to all concerned.
2. Health & Age certificate should be produced from the Civil Surgeon, Dir at Timergara.
3. He may not be handed over the charge if his age exceeds 30 years or below 18 years.
4. Before handing over charge to him his original documents should be checked.

(FAZLI NAEEM KHAN)  
DISTT: EDUCATION OFFICER (M)  
PRY: DIR AT TIMERGARA.

OFFICE OF THE DISTT: EDUCATION OFFICER (M) PRY: DIR AT TIMERGARA.

Endst: NO. 16-18 / PED/Estab: Dated Timergara the 1/1/96

Copy forwarded to:-

1. The SDEO(M) \_\_\_\_\_ for information.
2. The DAO, Dir at Timergara for information.
3. The candidate concerned for information.

M. Anwar/

DISTT: EDUCATION OFFICER (M)  
PRY: DIR AT TIMERGARA.

**ATTESTED**

BEFORE THE PESHAWAR HIGH COURT BENCH AT  
MINGORA/DAR-UL-QAZA SWAT

①  
B ④ ⑤

C.M No. 855 of 2016.

In

Writ Petition No. 03-M of 2014

Bacha Sherin son of Muhammad Said Khan  
Resident of Jagram, District Dir Upper.

.....applicant / Petitioner

VERSUS

- 1) District Education Officer (Male) Dir Upper at Dir.
- 2) Director Elementary & Secondary Education KPK at Civil Secretariat Peshawar.
- 3) Govt. of KPK through Chief Secretary at Civil Secretariat Peshawar.
- 4) Secretary Education Govt. of KPK at Civil Secretariat Peshawar.

.....Respondents

APPLICATION FOR IMPLEMENTATION OF  
THE JUDGMENT / ORDER OF THIS  
HONORABLE COURT DATED 28-03-2014 IN  
WRIT PETITION NO 03-M OF 2014.

23 SEP 2016

ATTESTED

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)

CM No. 855-M/2016

In W.P. No. 3-M/2014.

JUDGMENT

Date of hearing: 16.5.2017.

Petitioner:- (Bacha Sherin) by Syed Abdul  
Advocate.

Respondents:- (DEO Dir Upper & others) by Mr.  
Rahim Shah A.A.G.

MOHAMMAD IBRAHIM KHAN, J.- This a  
Petition for implementation of the  
judgment/order dated 28.3.2014 rendered by  
this Court in W.P. No. 3-M of 2014. While  
directives contained in Para No. 4 of the said  
judgment are reproduced as under:-

*"In view of the above, the Respondents  
are directed to consider the case of  
Petitioners in light of the Khyber  
Pakhtunkhwa Sacked Employees  
(Appointment) Act, 2012 subject to their  
eligibility in the light of the provisions of  
said Act within a period one month  
through a speaking order.*

*The petition was disposed in above  
terms.*

Nawab

**ATTESTED**

2. A look over the contents of the writ petition would reveal that Hanifullah and Bacha Sherin have jointly preferred their petition with the following perspective prayer:-

7

" It is, therefore, prayed that on acceptance of this writ petition this august Court may kindly:

A. Direct Respondents to re-appoint the Petitioners on the strength of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012.

B. Any other relief, which this august Court deems appropriate in the interest of justice, may also be granted."



3. Having heard arguments of learned counsel for the parties, record with their assistance gone through.

4. As the impugned judgment in the writ petition bearing No. 3-M of 2014 dated 28.03.2014 was delivered in terms that both the Petitioners i.e. Hanifullah and Bacha Sherin were to be given alike treatment under the law by way of their appointment under the Khyber Pakhtunkhwa Sacked Employees (Appointment)

~~TESTED~~ *ms*

8

Act, 2012, but as it is learnt that in the light of the directives contained in the *ibid* judgment of this Court only Hanifullah has been appointed while present Petitioner/Applicant Bacha Sherin has been totally ignored in the recruitment process. It is glaring feature of our Constitution that every person is entitled to equal protection of law, as in the Supra case similarly placed person (Hanifullah) has been appointed by the Respondents, but for reasons best known to them the other Applicant/Petitioner Bacha Sherin has not been given his due right of appointment under the ibid sacked employees Act. Therefore it is as undertaken that in order to implement the directives contained in the said writ petition, the Applicant/Petitioner may file a contempt of Court petition in a short while accordingly. May do so within the legal framework.

5. In such terms, this petition is disposed of accordingly.

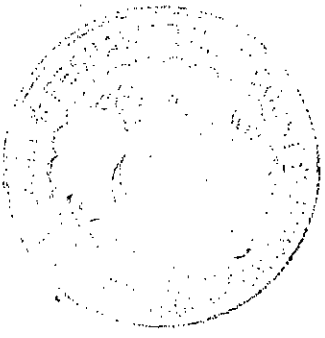
Sd. Mohammad Ibrahim Khan-J

Announced  
Dt: 16.05.2017

Sd: Ishtiaq Ibrahim-J  
J

**ATTESTED**

344  
28/5/17  
48  
187-  
28/5/17  
JUDGE



CERTIFIED TO BE TRUE COPY

28/5/17

28/5/17  
Nawab



# District Education Officer Male District Dir Upper



PH No. 0944-881400-Fax-880411  
E-mail deomdirupper@gmail.com

## APPOINTMENT.

As per the decision of Honorable Peshawar High Court Mingora Bench/Dar-ul-Qaza Swat in W-P NO. 3-M/2014, CM NO. 855-M.2016 & Announced on 28-03-2014, 16-05-2017 & Letter Vide No.317/AD/(Litigation) Dated Peshawar the 02-08-2017 Director Elementary & Secondary Education Peshawar in the light of sacked employees (appointment) Act,2012(Khyber Pakhtunkhwa Act NO.XVII-2012 and @ of 30% share from the available vacant Posts. **Mr. Bacha Sherin S/O Mohammad Said Khan**, Sacked employee's appointment is hereby ordered against the post of Primary School Teachers (PST) Male at **GPS Jatgram Wari School-based in BPS-12 (Rs.13320-955-41970)** Plus usual allowances as admissible under the rules & the existing policy of the Provincial Government, in Teaching Cadre on the terms and condition given below with effect from the date of taking over charge.

### TERMS AND CONDITIONS.

01. Appointment of Sacked employees shall be made through only regular basis to a civil post who possessed the prescribed qualification and experience required for the said post during the period from 1<sup>st</sup> day of November, 1993 to the 30<sup>th</sup> day of November 1996(both days inclusive) and were dismissed/removed, or terminated from service during the period from 1<sup>st</sup> day of November, 1996 to 31<sup>st</sup> day of December, 1998 on various grounds.
02. He will be on probation for a period of one year.
03. Appointment of Sacked employees subject to section 7 may be appointed in his respective cadre of his concerned Department, in which he occupied civil posts before his dismissal, removal and termination from service.
04. The Sacked employees shall be appointed against thirty percent of the available vacancies in the Department.
05. As per court decision if the appointees fail to acquire the training PTC and the required qualification (FA/FSC) within three years, his appointments will be considered as cancelled after the expiry of that period.
06. The appointees will provide undertaking that they will be completed the requisite training during a period of three years.
07. He should obtain Medical Fitness certificate from Medical Superintendent Concerned.
08. The Sacked employees shall not be entitled to claim seniority and other back benefits. A sacked employee appointed under section 3 shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.
09. The appointees will be governed by such rules and regulations/policies as prescribed by the Government from time to time.

**ATTESTED**

**Appointment Order PST (M) Sacked Employees**

(10)


10. If the appointees fail to take over charge with in fifteen days after issuance of this order, his appointment will be deemed as automatically cancelled.
11. Charge report should be submitted to all concerned.
12. All the drawing & Disbursing Officer is directed to verify his Academic and Professional Certificate/degree etc from the quarter concerned before starting his salaries otherwise he will be held responsible for the consequences if occurred in this regard.
13. The errors and omissions etc if found at any stage shall be rectified. In case of termination of said candidate, he will have no right to claim the order already issued in any court.
14. No. TA/DA is allowed.

**(MDIN-UD-DIN KHATTAK)**  
**District Education Officer,**  
**Male dir Upper**

Endst: No. 5904-111 File No.123/Apptt:/ DEO (M)/ADO (P) Dated Dir (U) the 23 /08/2017.

Copy forwarded for information and necessary action to the: -

1. Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer Dir Upper
3. Dy: District Education Officer Male Dir Upper.
4. Sub: Divisional Education Officer Male Wari.
5. A.P EMIS Local Office.
6. Official Concerned.
7. M/File

  
**District Education Officer,**  
**Male dir Upper**

**ATTESTED**

MEDICAL CERTIFICATE

D-11

Name of Official ..... Bacha Sherin

Cast or race ..... Pinda Khel

Father's Name ..... Mohammad Saad Khan

Residence ..... vul:- Jajgaon Teh wari DIST  
District Upper

Date of Birth ..... 27-11-1970 (According to NUC)

Exact height by measurement .....

Personal mark of identification .....

Signature of the official ..... [Signature]

Signature of head of office .....

Seal of Officer.....

I do hereby certify that I have examined Mr. Bacha Sherin a candidate for employment in the office of the Education Dept and cannot discover that he had any disease communicable of other constitutional affection or bodily infirmity except.....

Education Dept do not consider this as disqualification for employment in the office of the Education Dept. His age according to own statement 47 years and by appearance about 47 year.

[Fingerprints]  
LEFT HAND THUMB AND FINGER IMPRESSION.....

**ATTESTED**  
[Signature]  
Medical Superintendent  
Civil Hospital  
Medical Superintendent  
D.H. Hospital  
Upper District

# Charge Report

11/A

Certified that Mr. Bacha Sherin S/o

Muhammad Saeed Khan resident of Jatgram

took over the charge of his duty as PST

at G.P.S. Jatgram before noon today on

24-08-2017 vide DEO order No 5904-11/ File

No. 123/ Appt./ DEO (M)/ ADO (P) Dated Dir (U) the

23-08-2017

No — 37 — dated 24.8.01

Qam Jha  
24.08.2017  
Head Teacher  
G.P.S. Jatgram

Head Teacher  
G.P.S. Jatgram  
Distt: Dir Upper

24/8/2017

Teacher concerned

Bach Sherin

**ATTENDED**

To

The Director, E&SE Department,  
Khyber Pakhtunkhwa, Peshawar.

E-12

DEPARTMENTAL APPEAL FOR FIXATION OF PAY IN BPS-12 w.e.f.  
01-01-1996 i.e. FROM THE DATE OF INITIAL APPOINTMENT

Respected Sir,

It is most humbly stated that was appointed before your good self Department as PTC vide order dated 01-01-1996 as stop gap arrangement. That in year 1997 the services were dispensed with on the ground that his services was no more required to the Department. That on promulgation of KP Sacked Employee Act, 2012 I was submitted an application for reinstatement being covered under the said law but the same was not considered. Feeling aggrieved I was filed writ petition before the Peshawar High Court Mingora Bench, which was allowed. Dear Sir, I was appointed as PST w.e.f. taking over charge in light of Peshawar High Court Darul Qaza Bench judgment. That in response I have submitted my charge report and started duty quite efficiently and up to the entire satisfaction of my superiors. That I am entitle for fixation of pay from the date of my initial appointment i.e. 01-01-1996 but the concerned authority, has been appointed me with immediate effect i.e. from the date of taking over charge. Sir, I am feeling aggrieved preferred this Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may kindly be allowed for pay fixation w.e.f. 01-01-1996 with all consequential benefits. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated: 18.09.2019

M

Your's Sincerely

BACHA SHERIN, PST  
GPS Jatgram, Wari, Dir Upper

**VAKALATNAMA**

*Before the Appellate Tribunal, Peshawar*

OF 2019

*Bacha Sherin*

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

*Solvent Dept.*

(RESPONDENT)  
(DEFENDANT)

I/We *Bacha Sherin*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, 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. \_\_\_/\_\_\_/2019

*[Signature]*

**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

**MUHAMMAD MAAZ MADNI  
ADVOCATES**

OFFICE:  
Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Mobile No.0345-9383141

*Mir Zaman Safi  
Advocate*

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

Service Appeal No. 278/2020

Bacha Sherin, PST (BPS-12)GPS Jatgram Wari, District Dir  
Upper

..... (APPELLANT)

**Versus**

1. Secretary, Elementary and secondary Education Khyber  
Pakhtunkhwa Peshawar.
2. Secretary Finance Department, Khyber Pakhtunkhwa Peshawar.
3. Director, Elementary and secondary Education Khyber  
Pakhtunkhwa Peshawar.
4. District Education Officer (M) DIR Upper

..... (RESPONDENTS)

**JOINT PARA WISE COMMENTS ON & FOR BEHALF OF RESPONDENT NO: 4& Other**

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District Education Officer (M)  
Dir Upper

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
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4. District Education Officer (M) DIR Upper

..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON & FOR BEHALF OF RESPONDENT NO: 4 & Other

Respectfully Sheweth: -

**PRELIMINARY OBJECTIONS.**

1. That the Appellant is not the "aggrieved" persons with the meaning of Article 212 of the Constitution of the Islamic Republic of Pakistan 1973.
2. That the Appellant has got no cause of action /locus standi to file the instant appeal because the Appellant did not come on merit.
3. That the Appellant has not come to this Honorable court with clean hands.
4. That the Appellant is estopped by his own conduct.
6. That the instant writ petition suffers from laches, hence not maintainable in the present form.
7. That as per section 5 of the Sacked Employee Act 2012 the appellant is neither eligible nor entitled for relief he prayed in the instant appeal.

**(Sacked employees shall not be entitled to claim seniority and other back benefits)**

**ON FACTS.**

1. Para -1 of the facts is correct hence need no comments.
2. Para- 2 of the facts is also correct hence need no comments.



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

Service Appeal No. 278/2020

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7. That as per section 5 of the Sacked Employee Act 2012 the appellant is neither eligible nor entitled for relief he prayed in the instant appeal.

**(Sacked employees shall not be entitled to claim seniority and other back benefits)**

**ON FACTS.**

1. Para -1 of the facts is correct hence need no comments.
2. Para- 2 of the facts is also correct hence need no comments.

3. Para-3 of the facts is correct up to the extent of the judgment in the writ petition No.855-M/2016, in compliance the appellant was appointed with immediate effect.

4. Para-4 of the facts is correct that the appellant was appointed as per judgment of the Honorable Peshawar High Court Mingora Bench.

5. Para-5 of the facts pertain to record up to the extent of the departmental appeal, furthermore the appellant was re-appointed as per judgment of the Honorable Peshawar High Court Mingora Bench with immediate effect whereas in section 5 of the SACKED EMPLOYEE ACT 2012, it is clearly stated that the appellant will not be entitled to claim seniority and other back benefit. It is also pertinent to mention here that as per terms and conditions No.08 of the appointment order dated 23/08/2018, "the Sacked Employees shall not be entitled to claim the seniority and other back benefits as sacked employee appointed under section 3 shall not be entitled to claim any seniority, promotion or other back benefits and his appointment order shall be considered as fresh appointment".

6. Para-6, need no comments.

### **GROUND.**

A) In correct. The respondents always follow rules and policies consigned by government and the Appellant has been treated as per law rules and policies.

B.) Incorrect, hence denied, the official respondents always follow rules and policies in letter and spirit and no illegality has been done by the official respondents.

C) Need no comments.

D) In correct hence denied. Detail reply has been submitted in the above Para's.

E) Need no comments.


F) Incorrect hence denied and as per section 5 of the Act ibid the appellant is not entitled for any back benefits.

G) Need No comments.


H) Legal, However the official respondent also seeks permission for additional grounds during arguments.

It is, therefore, humbly prayed that on acceptance of the above submission, the instant service appeal may very graciously be dismissed in favor of the answering respondents with cost.

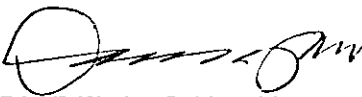
Secretary:

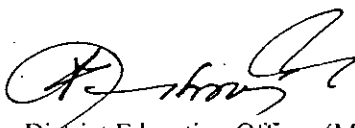
  
E&SED Khyber Pakhtunkhwa  
(Respondent No. 1)

Secretary:

  
Finance Department Khyber Pakhtunkhwa  
(Respondent No. 2)

Director:

  
E&SE Khyber Pakhtunkhwa  
(Respondent No. 3)

  
District Education Officer (M)  
Dir Upper  
(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 278/2020

Bacha Sherin, PST (BPS-12) GPS Jatgram Wari, District Dir  
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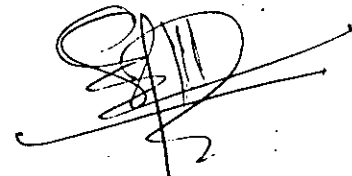
..... (RESPONDENTS)

Affidavit

I, Syed Alamzeb Shah Litigation officer DEO (M) Dir Upper do  
hereby solemnly affirm and state on oath that the whole contents of this  
reply are true and correct to the best of my knowledge and belief and  
nothing has been concealed from this August court.

Identified by

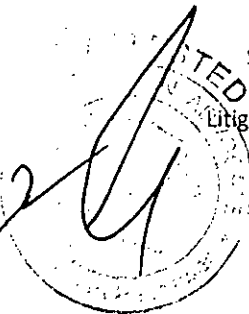
Add; Advocate General  
Khyber Pakhtunkhwa.



Deponent

Syed Alamzeb Shah  
Dir Upper  
Litigation Officer DEO (M) Dir Upper.

8/6/22



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

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4. District Education Officer (M) DIR Upper

..... (RESPONDENTS)

AUTHORITY LETTER

Mr. Syed Alamzeb Shah Litigation Officer of the office of the  
undersigned is hereby authorized to submit the comments /reply in the  
service appeal No.278/2020

Title: Bacha Sherin v/s Govt: of KP on my behalf.

District Education officer (M)

District Dir

Upper