

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Petition U/S 12(2) 668 2023


In Service Appeal NO.983/2004

VERSUS

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

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

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

Petition. No. 688 P/2023 .

1. The Chief Minister,
Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary,
Govt of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary,
Industries, Commerce,
Minerals Development,
Labour & Technical Education
Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director General,
Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar.

...Petitioners

VERSUS

1. Muhammad Akbar Khan
Ex-Deputy Director,
Mines & Minerals Department,
Khyber Pakhtunkhwa, Peshawar through his legal heirs.
2. Farzana Shah (daughter)
3. Asad Akbar (Son)
4. Saad Akbar (Son)

...Respondents

**PETITION U/S 12(2) CIVIL PROCEDURE CODE 1908,
FOR SETTING ASIDE THE JUDGMENT/ORDER DATED
14.09.2021 OF THIS HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.983/2004 ON THE GROUND THAT SAME
HAS BEEN OBTAINED THROUGH FRAUD AND
MISREPRESENTATION OF FACTS AND ALSO ON THE
PREMISE THAT THIS HON'BLE TRIBUNAL HAD NO
JURISDICTION TO ENTERTAIN THE APPEAL.**

RESPECTFULLY SHEWETH,

632

1. The deceased Muhammad Akbar was Deputy Director in the Mines and Minerals Department of Khyber Pakhtunkhwa Peshawar and for his involvement in a criminal case of corrupt and corrupt practice was arrested by the NAB authorities. At the conclusion of the trial, he was found guilty and consequently was convicted and sentenced to rigorous imprisonment for two years and also to pay a fine of Rs 25,65,000/- The convict assailed his conviction and sentence in an appeal before the Peshawar High Court which was dismissed, however, the amount of fine was reduced to one million.
2. That the respondent impugned his conviction and sentence before the Hon'ble Supreme Court in the criminal petition for leave to appeal which was allowed by the apex court and resultantly his conviction was set aside and he was acquitted accordingly
3. That it is worth mentioning that for his conviction, the respondent was proceeded against by the department under the then Removal from Service Order and was dismissed from service by the department vide order dated 04.09.2004 which he had challenged before this Hon'ble Tribunal in service appeal No.983/2004. The aforesaid appeal was allowed vide judgment dated 14.09.2021 against the petitioners filed CPLA which is pending adjudication before the Hon'ble Supreme Court.
4. That the petitioners are aggrieved of the aforesaid order/judgment of this Hon'ble Tribunal for its being obtained through fraud and misrepresentation of the respondent-/employee and also on the ground that this

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Hon'ble Tribunal had no jurisdiction to entertain the service appeal, hence, this application under section 12(2) CPC for setting the impugned judgment on the following grounds amongst others;

GROUND'S,

1. That the impugned judgment/order is liable to be set aside under section 12(2) CPC on the ground that according to Section 4 of the Civil Servant Act, 1973, only a civil servant, who feels himself aggrieved of some order or action of the department can approach the Service Tribunal for the redressal of his grievance against the order or action. It is worth stating that during the pendency of the service appeal, the respondent-employee had breathed his last and as such his appeal had stood abated where after this Hon'ble Tribunal had no jurisdiction to further proceed with the matter.
 2. That the Judgment/Order dated 14.09.2021 (impugned herein) is bad in law and facts both hence untenable.
 3. *That* That the Judgment/Order dated 14.09.2021 of this Hon'ble Tribunal was obtained through fraudulent means and misrepresentation, hence liable to be recalled.
 4. That the impugned Judgment/Order dated 14.09.2021 is contrary to law and facts and same has been passed without taking into account the true facts of the case. Hence liable to be set aside.
- 9

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It is therefore very humbly prayed that on acceptance of this petition.

tion, the Judgment/Order dated 14-09-2021 may kindly be set aside U/S 12(2) CPC as the same was obtained by misrepresentation and fraud.

Petitioners

Through

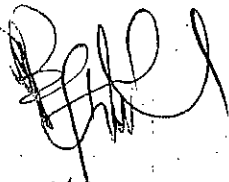
Dated: 07.08.2023



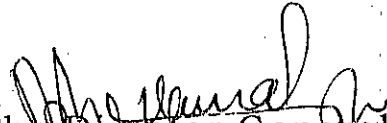
The Chief Minister,
Khyber Pakhtunkhwa,
Peshawar.



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.

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BEFORE THE SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No.608/2022

Saad Akbar.....Petitioner.

VERSUS

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

A F I D A V I T

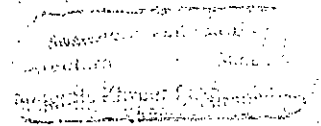
I, Said Muhammad Superintendent (Litigation) BS-17 of Directorate General Mines and Minerals do hereby solemnly affirm and declare that the contents of the accompanying petition 12(2) is correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

DEPONENTS

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

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Cell No.0306-5680362



S-A

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL No. 983 /2004

vide order sheet dated 10-07-2000 implead as parties.

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

① Farzana Shah daughter
② Asad Akbar son
③ Saad Akbar sons
are impleaded as parties
vide order sheet dated 10-07-2000.
Appellant.

1772
1-12-04

Versus

1. The Chief Minister,
NWFP,
Chief Minister's House,
Peshawar.
2. The Chief Secretary,
Govt. of NWFP,
Civil Secretariat,
Peshawar.
3. The Secretary,
Industries, Commerce,
Mineral Development,
Labour & Technical Education
Department, NWFP,
Peshawar.
4. The Director General,
Mines & Mineral,
NWFP, Peshawar..... Respondents

Med to-GRY
M.A.
14/12-04

SERVICE APPEAL UNDER SECTION 10 OF THE
NWFP REMOVAL FROM SERVICE (SPECIAL
POWERS) ORDINANCE, 2000 AGAINST THE

ATTESTED

Khyber Pakhtunkhwa
Peshawar

3101
Amru-J
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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

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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

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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

[Handwritten signature]

ATTESTED

[Handwritten signature]
WITNESSES
Name: _____
Signature: _____
Date: _____

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

ATTESTED



MINER
KHYBER PAKHTUNKHWA


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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)

ATTESTED


NPR
Khyber Pakhtunkhwa
Service Ordinance

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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)

Certified
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Petition: 25/10/21
 Number of Copies: 2000
 Copy to: 22/-
 Urgent: -
 Tax: 22/-
 Name of Applicant: -
 Date of Completion of Copy: 08/11/21
 Date of Delivery of Copy: 08/11/21



Most Immediate/ Court matters

Government of
Khyber Pakhtunkhwa
Minerals Development Department

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

7503-07

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,

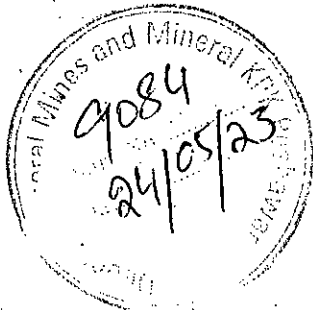
Gausont
Section Officer (Estt:)

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.



Gausont
Section Officer (Estt:)



Government of Khyber Pakhtunkhwa Minerals Development Department

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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 tried 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)

Minerals Dev. Deptt. (NPK)
 Secy: Diary No. 91
 Date: 18-04-23

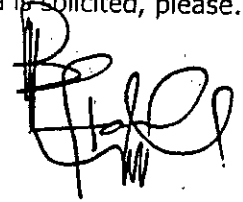
minerals-17-84-00011

Shah

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. Gufran 19.4.23

Minister for Minerals Development Department,
Khyber Pakhtunkhwa

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister
Khyber Pakhtunkhwa.

R-10

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. 14

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.

Chief Secretary, Khyber Pakhtunkhwa

(Akhtar Saeed Turk)
Secretary Establishment
10 May, 2023

12. PC 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



243/15

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, pla.

LAG

Ms Shabeela Asst. Ag.

[Signature]
Secretary
Law, Planning and Human Resources Department
Govt. of Khyber Pakhtunkhwa
17/5/2023
[Signature]
Advocate General
Khyber Pakhtunkhwa
Peshawar

14. my views are endorsed at
para - 15

[Signature]

Assistant Advocate General
Khyber Pakhtunkhwa
Peshawar



LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

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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]

[Signature]
31/5/2023

CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

20. Dismissed with Secretary Law. Pl. have ~
filed discuss with AG and then re-submit.

Secretary Law.

[Signature]
31/5/2023

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

LAG

on P.P.

[Signature]
31/5



**OFFICE OF ADVOCATE GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR**

No. 25535 /AG

dated Peshawar, the 02/06 /2023

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

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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.

Secretary Law



18

2023 S C M R 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 Fatch 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, Fatch Khan, ever challenged his regularization with immediate effect, rather than from the date of his initial

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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 lis, 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.



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

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NO. ALO(OP-I)/LD/15-2/2023/KC 3072-
DATED: PESH: THE 27TH MARCH, 2023

To

The Secretary,
Government of Khyber Pakhtunkhwa
Minerals Development Department.

Mineral Dev. Dept. No. 806
Secy. Intry No. 806
Date: 29.3.23

Attention:

Section Officer (Estr.)

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"

1 SCA)

RECEIVED
20/3/23

Yours Faithfully,

[Signature]

Assistant Law Officer (Opinion-I)

13/83

list 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 signature]
process administration
order sheet copy
not in this very

Form No. (Form) D. No. 1529
Date: 30-03-2023
Minerals Dev. Department (MDD)



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B
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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:

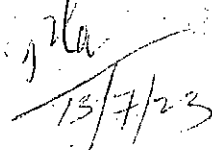
26. The case has been re-examined. That since misrepresentation as well as the element of want of jurisdiction, is apparent in the instant case, therefore, the Law Department is of the view that the Administrative Department may file an application under section 12 (2) Civil Procedure Code, 1908 against 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".


(SHAGUFTA NAVEED)
SECRETARY LAW

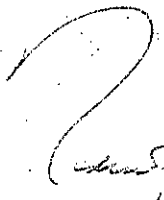
CHIEF SECRETARY

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

Chief Minister

29. As proposed in para 28 ante. 

CS


7/7/2023.

13/7/23

E.P. No. 608/2023

Asad Akbar vs Govt

18/07/23

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.

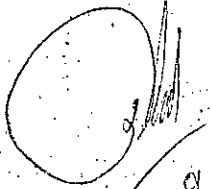
(Muhammad Akbar Khan)
Member (E)

Kour-muloh

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.

(Salah-Ud-Din)
Member (J)



7.9.23

Assst:

Naeem Amin