


FORM OF ORDER SHEET

Court of _____

Restoration Application No. 743/2023

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.10.2023	<p>The application for restoration of Appeal no. 1067/2023 submitted today by Mr. M. Rehman Safi Advocate. It is fixed for hearing before Single Bench at Peshawar on . Original file be requisitioned. Parcha Peshi is given to the counsel for the applicant.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

BEFORE THE COURT OF HON'BLE CIVIL JUDGE

PESHWAR

Restoration Appli. no. 743/2023

Service Appeal No. _____/2023

Hayat Muhammad

Versus

Secretary Elementary & Secondary Education of KPK & Others

INDEX

S.No.	Description of documents	Annex	Pages
1.	Restoration Application		1-2
2.	Grounds of Appeal		3-7
3.	Affidavit		8
4.	Copy of the order		9
5.	Wakalat Nama		10

Dated: 10/10/2023

Plaintiff

M. Rafiq

Through

M. Rehman Safi

&

Ali Shah

Advocates, Peshawar.

[Signature]

(1)

BEFORE THE COURT OF HON'BLE CIVIL JUDGE

PESHWAR

Restoration Application No. 743/2023

Hayat Muhammad Khan Senior Clerk BPS-14 GGHMSS

Battagram

Appellant

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 8221

Dated 10/10/23

1. Secretary Elementary and Secondary Education KPK Peshawar & Others.
2. Director Elementary and Secondary Education KPK G.T. Road Peshawar
3. Additional Director (Estab) Directors of Elementary and Secondary Education Khyber Pakhtunkhwa G.T Road, Peshawar.
4. District Educational Officer (M) Battagram.
5. Mr. Muhammad Nauman Senior Clerk BPS-14 GHHS Thakot, Battagram.

Respondents

**APPLICATION FOR RESTORATION
OF THE ABOVE TITLE CASE.**

Respectfully Sheweth;

1. That the above noted case was pending adjudication before this Hon'ble Court and was fixed for dated 25.09.2023 and was dismissed in default due to non-appearance of appellant/applicant. (attested copy attached).
2. That the non-appearance of applicant was not willful but due to the un avoidable reason of death of near relative / appellant.

(2)

3. That the court of appearing on every assures this Hon'ble court of appearing on every date in future to the final disposal of this case.

4. That in view of involvement of valuable right of the applicant / appellant in instant application or case if the instant application is not allowed, the applicant/appellant will suffer irreparable loss.

It is, therefore, requested that on acceptance of this application of appeal may kindly be restored and order dated 25.09.2023 be set aside.

Dated: 09/10/2023

Plaintiff

Through

M. Rehman Safi

&

Ali Shah

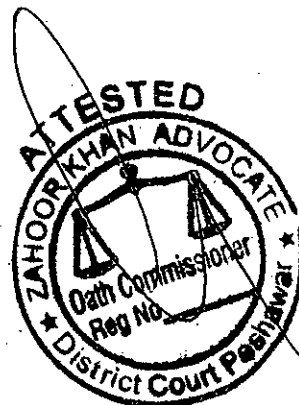
Advocates, Peshawar.

Cell # 0334-9003717

AFFIDAVIT:-

All the contents of this application are true and correct and nothing has been concealed.

Deponent



2/10/23

(8)

BEFORE THE COURT OF HON'BLE CIVIL JUDGE
PESHWAR

Service Appeal No. _____/2023

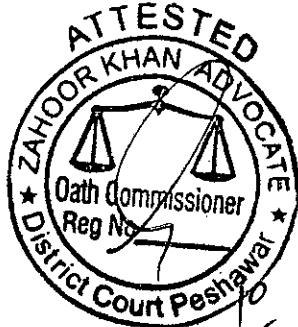
Hayat Muhammad

Versus

Secretary Elementary & Secondary Education of KPK & Others

AFFIDAVIT

I, Muhammad Rahman Safi Advocate at District Court Peshawar, do hereby solemnly affirm and declare that all the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



16/10/2023

M. Rahman Safi

Advocate

Cell: 0334-9003717

(3)
BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No 1067 / 2023



Hayat Muhammad Khan Senior Clerk BPS-14 at GGHMSS
Battagram.

.....Appellant


VERSUS

- 1) Secretary Elementary and Secondary Education,
Khyber Pakhtunkhwa, Education Department,
Peshawar.
- 2) Director Elementary and Secondary Education,
Khyber Pakhtunkhwa, G.T road, Peshawar.
- 3) Additional Director (Estab) Directorate of Elementary
and Secondary Education, Khyber Pakhtunkhwa, G.T
road, Peshawar.
- 4) District Education Officer (M), Battagram.
- 5) Mr. Muhammad Nauman Senior Clerk BPS-14 GHHS
Thakot, Battagram.

.....Respondents

APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE IMPUGNED
ORDER DATED 09-05-2023 VIDE WHICH
DEPARTMENTAL APPEAL OF THE
APPELLANT WAS FILED AND THE
ORIGINAL POSTING/TRANSFER ORDER
DATED 31-03-2023 WAS KEPT UPHELD.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(2) (4)

Respectfully Sheweth:

Appellant humbly submits as under:-

- 1) That names and addresses of the parties given in the head note of this service appeal are true and correct for effecting services upon the parties.
- 2) That the appellant was posted as Senior Clerk BPS-14 and was performing his duties with full zeal and zest and to the entire satisfaction of his superiors.
- 3) That on 15-03-2023 the worthy Director (respondent No-2) was retired and vide office letter dated 24-03-2023, respondent No-3 was assigned the additional charge of Director in addition to his own duties to look after the matters of Directorate. (Copy of letter dated 24-03-2023 is attached as ANNEX-A).
- 4) That the worthy Advisor to Chief Minister for Elementary and Secondary Education sent two different lists of posting/transfer to respondent No-2 for further necessary action/approval on 27-03-2023. (Copies of lists of posting/transfer are attached as ANNEX-B & B/1 respectively).
- 5) That in compliance to the above, respondent No-2 if without any cause with mala fide intention transferred the appellant to the office of SDEO (F) Battagram Alai vide office letter dated 31-03-2023. (Copy of letter dated 31-03-2023 is attached as ANNEX-C).
- 6) That the appellant filed representation/appeal against the impugned order dated 31-03-2023 before respondent No-1 which was filed on 09-05-2023. (Copies of representation/appeal and order dated 09-05-2023 are attached as ANNEX-D & E).

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7) That the impugned order dated 31-03-2023 and further rejection of appeal dated 10-04-2023 are based upon political influence, illegal, without jurisdiction, arbitrary, discriminatory, mala fide, void ab-initive against the law and facts on the following grounds.

GROUND:

- A. Because, the act, commission and omission of respondents and the office order/ Notification dated 31-03-2023 passed by respondent No-2 (hereinafter impugned up-to the extent of appellant) and further the rejection of departmental appeal of the appellant by respondent No-1 is patently illegal, unlawful, without lawful authority, of no legal effect, having no value in the eyes of law, thus liable to be set-aside/ withdrawn and the appellant may kindly be allowed to keep and continue his duties on his previous post and designation with all service benefits without any further delay, reason and justification.
- B. Because, admittedly the care taker government of Khyber Pakhtunkhwa took over the charge just to look after the daily affairs of Provincial Government but knowingly all these facts and banned over the posting/transfer of civil servants, intentionally intercepted and directed respondent No-2 for issuance of impugned order without any good reason and justification or the reason best known to them.
- C. Because, it is strange enough that somewhere there is no availability of post against which the transfer has been made rather against non sanctioned post (Copy of letter dated is attached as ANNEK-F as reference), moreover the transfer of the appellant along with other employees are made illegal and

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6

unlawfully just to punish, harass and humiliate the innocent employees (appellant).

D. Because, from the bare perusal of the afore referred impugned order dated 31-03-2023, it is very much clear that the same has not been passed in the exigency of the service, but it is very much clear on the instance of some political person, hence the department adopted pick and choose and dealing with the appellant in discriminating way despite the facts that the appellant has not completed the specified period, thus the impugned transfer order has no legal sanctity in the eyes of law and this type of practice is always condemned by this Hon'ble Tribunal as well as apex court of this country.

E. Because, the transfer order is against the policy relating to the transfer and posting being issued by the government of KP from time to time.

F. Because, the impugned transferred order is otherwise not sustainable for being based on mala fide and having without application of independent mind and thus liable to be set at naught by this Hon'ble Tribunal.

G. Because, the appellant is serving the department with his full devotion and to the entire satisfaction of his superiors which is evident from his unblemished service record.

H. Because, there is no any complaint, enquiry or any other departmental proceeding pending or initiated against the appellant till date but respondents issued the impugned order which is against the law, rules and regulations governing the subject matter thus invites consideration of this Hon'ble Tribunal.

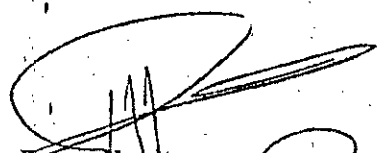
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

I. That any other grounds, with the permission of this Hon'ble Tribunal will be raise at the time of arguments.

It is, therefore, most humbly prayed, that on acceptance of the instant appeal, the impugned order dated 31-03-2023 passed by respondent No-2 against the appellant may graciously be set aside/withdrawn being against the law rules and regulation governing the subject matter (up-to the extent of appellant) and the appellant may kindly be allowed to keep and continue his official duties with previous post/designation etc with all service benefits.,


Any other relief deemed fit in the circumstances of the case may also be granted in favor of appellant.

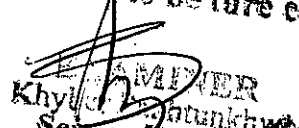

Appellant
Through
Muhammad Arit Jan
Advocate High Court

AFFIDAVIT

I, Hayat Muhammad Khan Senior Clerk BPS-14 at GGHMSS Battagram do hereby affirm and declare on oath that the contents of instant Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent

ATTESTED
* Gul Daraz Khan *
* Advocate High Court *


Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

S.A No.1067/2023

(9)

Hayat Muhammad is Grant



ORDER

25th Sept. 2023

1. Nobody is present on behalf of appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Learned counsel for the appellant was telephonically contacted but today, ^{but} nobody put appearance on behalf of the appellant, therefore, the appeal in hand is dismissed in default. Consign.
3. Pronounced in open Court at Abbottabad given under our hands and seal of the Tribunal on this 25th day of September, 2023.

(Salah-Ud-Din)
Member (J)


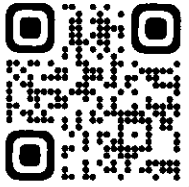
(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

*Mutazem Shah *

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 28/9/23
Number of Words Page 6
Copying Fee 30/-
Urgent _____
Total 30/-
Name of Copyist Shahzad
Date of Completion of Copy 05/10/23
Date of Delivery of Copy 05/10/23

قیمت 50 روپے	15043	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈویکٹ: محمد رحمان لہاری، مندر علی شاہ	بار کونسل ایسوسی ایشن نمبر: 20-2792	PESHAWAR BAR ASSOCIATION
رابطہ نمبر: 0334-9003717		
		

بعدالت جناب: بعدالت جناب جمع لہاری سروسز پرائیویٹ لٹڈ، کراچی

منجانب: سائل	دعویٰ: Restoration Applied
حیات محمد خان	علت نمبر:
بنام	مورخہ:
سکرٹری ایجوکیشن وغیرہ	جرم:
	تھانہ:

بامث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام لٹڈ کے محمد رحمان لہاری، مندر علی شاہ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی رائے اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سائنٹیفک اور ذمہ دار منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا کہ مندرجہ

المرقوم: 9/10/20

Accepted by Advocates

المقام: واہ شد الع بد

مقام