Form-A

FORM OF ORDER SHEET

Court of_

		Restoration Application No. 756/2023			
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge			
1	2				
1	12.10.2023	The application for restoration of Execution			
		petition No. 148/2018 received today by registered			
	` .	postxthrough Mr. Rashid Iqbal Khan Jadoo'n Advocate. It			
	<i>,</i> ·	is fixed for hearing before touring Single Bench at			
	,	A.Abad on . Original file be requisitioned.			
		By the order of Chairman			
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		REGISTRAR			
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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Restoration Application NO.756/2023 Digner Faschinghous 927/

ΙN

Dated_12-10-2023

Execution Petition No:

148 of 2018

Arshad Khan S/O Mir Afzal Khan Senior C.T teacher GHSS No 3 (English Medium), Abbottabad R/o village, Ghumawan, Post Office Nawan Shehr, Tehsil& District Abbottabad.

Petitioner

Versus

District Education Officer (Elementary & Secondary Education Department), Abbottabad and others.

Respondents

APPLICATION FOR RESTORATION OF TITLED EXECUTION PETITION WHICH WAS ADJOURNED SINE DIE THROUGH ORDER DATED 21/10/2020 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP COURT ABBOTTABAD).

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S.No	DESCREPTION OF DOCUMENTS	ANNEXURES	PAGE NO
1	Memo; of application for restoration of execution petition		
2	Copy of Execution Petition	A	3 to 4
3	Copy of order dated 21/10/2020	A-1	5 to 6
4	Copy of High Court Judgment dated 14/06/2023	В	7 to 11
5	Wakalatnama and power of Attorney	С	12 to 14

Through

(Arshad Khan

Petitioner

(Rashid Iqbal Khan Jadoon)

Advocate IBC Islamabad

Attorney Abbottabad.

(Shahzad Shakoor)

Advocate High Court Abbottabad

(Muhammad Tanveer)

Advocate High Court Abbottabad

Abbott Law Chamber, Office No 6,

Ground Floor, Ayub Tanoli lawyer plaza

Abbottabad. 0333-5025002, 0316-9343818

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Restoration Application no 756/2023
CMA No______ of 2023

IN

Execution Petition No: 148 of 2018

Arshad Khan S/O Mir Afzal Khan Senior C.T teacher GHSS No 3 (English Medium), Abbottabad R/o village, Ghumawan, Post Office Nawan Shehr, Tehsil& District Abbottabad.

Petitioner

Versus

District Education Officer (Elementary & Secondary Education Department), Abbottabad and others.

Respondents

APPLICATION FOR RESTORATION OF TITLED EXECUTION PETITION WHICH WAS ADJOURNED SINE DIE THROUGH ORDER DATED 21/10/2020 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP COURT ABBOTTABAD).

Respectfully Sheweth,

- That petitioner's titled execution petition, relating to advance Increments on higher qualification, in pursuance of final Judgment, passed by this Honourable Tribunal on 12/05/2009 at Camp Court Abbottabad, was pending, in the meanwhile respondents on appearance, stated about an appeal which was pending before the Supreme Court of Pakistan relating to Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012).
- 2) That due to appeal pending before the Supreme Court of Pakistan, this Honourable Tribunal in titled execution petition, passed an order dated 21/10/2020 for adjournment Sine die, till the decision of Apex Court. Copy



of Execution Petition and order dated 21/10/2020 are annexed as **Annexure**"A" & "A-1"

That the same matter of (KPK ACT NO IX OF 2012 dated 15/05/2012) is now decided by Honourable Peshawar High Court Peshawar on 14/06/2023, whereupon there is no suspension or stay order is passed by Apex Court nor seen and now petitioner is legally entitled to reopen the matter of titled execution petition for its disposal as it is very old pending execution matter of final judgment. Copy of High Court Judgment dated 14/06/2023 is annexed as Annexure "B"

It is therefore respectfully prayed that titled execution petition may please be restored for implementation the judgment dated 12/05/2009 and grant of advance increments of M.A & B.A with effect from due date, with all back benefits.

Through

h Petitioner

(Rashid Iqbal Khan Jadoon) Advocate IBC Islamabad

Attorney Abbottabad.

(Shahzad Shakoor)

Advocate High Court Abbottabad

(Muhammad Tanveer)

Advocate High Court Abbottabad

Abbott Law Chamber, Office No 6,
Ground Floor, Ayub Tanoli lawyer plaza
Abbottabad. 0333-5025002, 0316-9343818

VERIFICATION

I do here by verified that contents of instant application is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and same nature of any other same nature petition is not pending before Honourable Tribunal

(Arshad Khan)
Petitioner

MEXUKE, F



CCE TrBEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Execution Petition No: 48 of 2018

Dated 16/05/2018

Arshad Khan S/O Mir Afzal Khan C.T teacher Government High School No Nawan Shehr, Tehsil& District Abbottabad.

Appellant

Versus

- District Education Officer (Elementary & Secondary Education Department), Abbottabad.
- 2 District Comptroller of Accounts, Abbottabad.
- 3 Accountant General Khyber Pakhtunkhwa Peshawar.
- Director of (Elementary & Secondary Education Department) Khyber
- Secretary to Govt of Khyber Pakhtunkhwa (Elementary & Secondary Education Department) Peshawar.
- Secretary to Govt of Khyber Pakhtunkhwa, Finance Department Peshawar

Respondents

EXECUTION **PETITION** FOR **IMPLEMENTATION** JUDGMENT DATED 12/05/2009 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP COURT ABBOTTABAD).

<u>PRAYER</u>

Filedto-day

Registrar

IT IS RESPECTFULLY PRAYED THAT RESPONDENTS MAY PLEASE BE DIRECTED TO IMPLEMENT THE JUDGMENT DATED 12/05/2009 AND GRANT OF 06 SIX ADVANCE INCREMENTS OF M.A AND 04 FOUR ADVANCE INCREMENTS OF B.A INSTEAD OF 03 FROM ITS DUE DATE WITH ALL BACK BENEFITS.

> Certified to ture copy



- That petitioner's service appeal relating to advance Increments on his higher qualification was accepted by this Honourable Service Tribunal on 12/05/2009 at Camp Court Abbottabad. Copy of service appeal and judgment is annexed as **Annexure "A" & "B"**.
- That prior to implementation of the judgment dated 12/05/2009, An Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated/published by the Government of Khyber Pakhtunkhwa/respondents.
- That the pending implementation matter was legally suspended/hanged in the presence of KPK ACT NO IX OF 2012, so petitioner challenged it through service appeal before this Honourable Tribunal. Copy of service appeal is annexed as Annexure "C"
- That the same service appeal is now decided on 21/03/2018 and petitioner is allowed to seek all his remedies/rights available to him under the law, hence through instant execution petition he is legally entitled for implementation of judgment dated 12/05/2009 and grant of 06 advance increment of MA & 04 advance increment of BA instead of 03. Copies of withdrawal application and order dated 21/03/2018 are annexed as Annexure "D" & "E"

It is therefore respectfully prayed that respondents may please be directed to implement the judgment dated 12/05/2009 and grant of 06 six advance increments of M.A & 04 four advance increments of B.A instead of 03 from its due date, with all back benefits.

<u>VERIFICATION</u>

(Arshad Khan) Petitioner in person

I do here by verified that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and same nature of any other implementation petition is not pending before Honourable Tribunal.

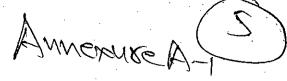
(Arshad Khan)
Petitioner in person

Certified to be ture copy

EXAMINER Khyber Pakhtunkhwo Service Iribunal 21.10.2020

EP 148/2018

Petitioner in person present.



Usman Ghani learned District Attorney alongwith Sohail Ahmad Zeb Litigation Assistant for respondents present.

From the record, it is evident that the present petitioner and others filed service appeals U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of advance increments with all back benefits on the basis of Para-05(i) (c) of the Notification No. FD (PRC) 1-1 /89 dated 11.08.1991 issued by Finance Department and in pursuance of judgment passed by the August Supreme Court of Pakistan and vide judgment dated 12.05.2009 No.1276/2007, all the appeals were accepted. In the meanwhile, Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Qualification Bill 2012 having been passed by the Provincial Assembly Khyber Pakhtunkhwa on 8th May, 2012 and assented to by the Governor Khyber Pakhtunkhwa on 11th May, 2012 was published as an Act of the Provincial Legislature of Khyber Pakhtunkhwa. This Act was challenged before the Service Tribunal as well as in the August High Court. Appeals pending in the Service Tribunal were withdrawn by the appellants vide order dated 21.03.2018 of this Tribunal. Writ Petitions were allowed vide order dated 08.06.2017 and the official respondents were directed to provide the benefits of advance increments according to the notification dated 11.08.1991 on attaining higher qualification during service. The respondent departments challenged the said order in the August Supreme Court of Pakistan and vide order dated 18.12.2019 of the August Supreme Court of Pakistan, leave was granted and the impugned judgment passed by the Hon'ble Peshawar High Court was suspended. Certified to be ture copy

21/10/20



In view of the above discussion, the instant execution proceedings are adjourned sine die till the decision by the August Supreme Court of Pakistan. Petitioner is at liberty to seek its restoration after the decision by the August Supreme Court of Pakistan. File be consigned to the record room.

Certification he ture copy

Khyber Pakhankhwa Service Tribunal Peshawar (Rozina Rehman) Member (J) Camp Court, A/Abad

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Annexure B. (1)

JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR JUDICIAL DEPARTMENT

W.P. No.3081-P/2012 with CM No.1672-P/2022

Anayat Ullah Khan and others

Vs.

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others

Date of hearing

14.06.2023

Petitioner(s) by:

M/s. Noor Muhammad Khattak and L.

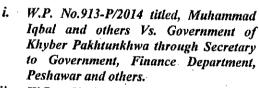
Nawab Ali Noor, Advocates.

Respondent(s) by:

Mr. Amir Javed, Advocate General Khyber Pakhtunkhwa and Barrister Muhammad Yaseen Raza Khan, Addl: Advocate General a/w Mr. Fazl-e-Khaliq, Litigation Officer, DEO (M&F), Swabi.

JUDGMENT

IJAZ ANWAR, J. Through this single judgment, we intend to decide the instant writ petition and Writ Petitions, listed below, since in all these cases, similar questions of law and facts are involved. The connected writ petitions are:-



ii. W.P. No.1418-P/2014 titled, Molvi Muhammad and others Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others

iii. W.P. No.2053-P/2014 titled, Saeed Ullah and others Vs. Government of Khyber Pakhtunkhwa through Secretary S&GAD, Peshawar and others

iv. W.P. No.1182-P/2018 titled, Muhammad Rehman and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others

v. W.P. No.2326-P/2019 titled, Muhammad Anwar Vs. Government of Khyber







Pakhtunkhwa through Secretary Education, Peshawar and others vi. W.P. No.1680-P/2021 titled, Ghandal Khan Vs. District Education Officer (Male), Peshawar and others

2. In the instant writ petition, the petitioners have prayed for the following relief:-

"It is, therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may be pleased to declare the act as against the basic norms of law & rules repugnant to constitution, law and practice/policy as such no legal effect liable ti mauled set-aside".

- In all these petitions, the petitioners have mainly questioned the vires of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (hereinafter to be referred as "the Act").
- 4. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioners.
- 5. Arguments heard and record perused.
- Perusal of the record transpires that the petitioners have questioned the vires of "the Act" on the ground that promulgation of "the Act" had defeated the judgments of the superior Courts. He further contended that vested rights of the petitioners have accrued in the matter and placed reliance on the judgments reported as "FECTO Belarus Tractor Ltd Vs. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605), 2013

Ala d

EXAMINER Peshawar High Court



SCMR 1749, 2013 SCMR 1752 (Contempt of Court Proceedings case) and AIR 1975 SC 2199".

On the other hand, the learned Advocate General, Khyber Pakhtunkhwa has referred to a recent judgment of the Hon'ble Supreme Court of Pakistan passed in the case titled "The Divisional Superintendent, Pakistan Railways, Rawalpindi and others Vs. Syed Irshad Ali Abid (2021 PLC (C.S.) 277)" and contended that the grant of increments on higher educational qualification has since been discontinued through Notification dated 13.09.2001, as such, it is a past and closed transaction and that necessary time was granted to the employees who have any claim, albeit, when they failed to claim the same for long ten years, as such, "the Act" in question was promulgated. He has also produced a letter dated 29.04.2010 issued by the Additional Secretary (Regulation), Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), whereby, clarification was given about the advance increments on higher educational qualification and according to which, a period of sixty days was provided for the remaining claims and argued that even then, petitioners have failed to claim the advance increments at the relevant time.

8. During the course of hearing, learned counsel for the petitioners has produced letters/applications which were duly placed on file and contended that the rights of the petitioners to the grant of advance increments were secured





and guaranteed by a Government's circular letter dated 11.08.1991 and that the case of the petitioners was matured at the relevant time before the cut-of-date i.e. 13.09.2001 when the grant of such increments was discontinued. He also referred to a judgment of the Hon'ble Supreme Court of Pakistan passed in "CPLAs No.525 and 526/2007 decided on 19.07.2007".

At this stage, the learned Advocate General, Khyber Pakhtunkhwa, representing the respondents, contended that the civil servants, who were holding higher educational qualification prior to discontinuation of advance increments in the year, 2001, are entitled for the benefit flowing from circular letter dated 11.08.1991, however, those who have improved their qualification after the notification dated 13.09.2001, under no circumstances, can claim the same benefit and that the bar created through "the Act" would be equally applicable.

upon the vires of "the Act" and in view of the statement of the learned Advocate General, Khyber Pakhtunkhwa, dispose of this and the connected writ petitions and direct the respondents to consider the case of the petitioners in the light of circular letter dated 11.08.1991 and in case, they fulfill the condition mentioned therein for the grant of advance increments prior to the cut-of-date, they be allowed such benefit. It is, however, clarified that only the case of the present petitioners shall be

All of

EXAMINER Peshaviar High Court



considered and that others cannot claim such benefits, having not agitated the matter at the relevant time.

Announced Dt:14.06.2023

JUDGE

JUDGE

(DB) Hon'ble Mr. Justice Iinz Anwar and Hon'ble Mr. Justice Sved Muhammad Attique Shah

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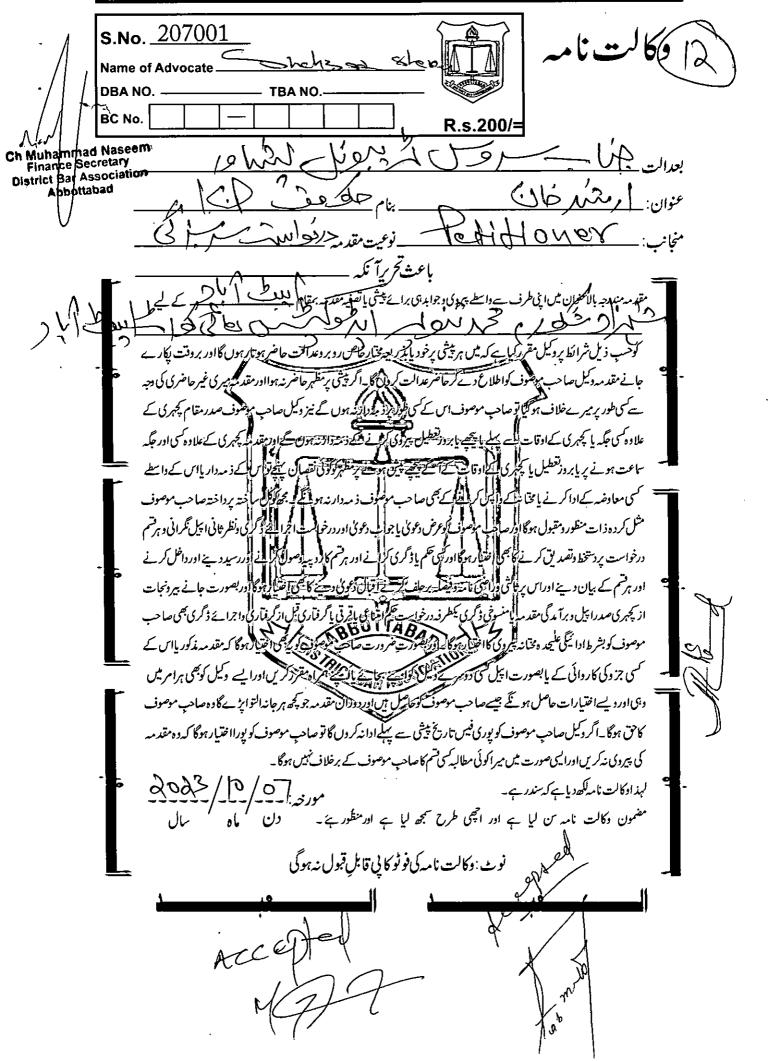
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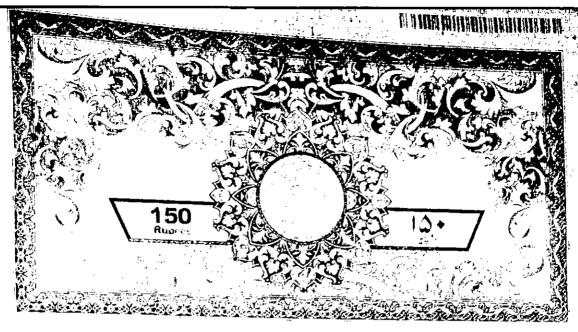
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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL FESHAWAR

EXECUTION PETITIONS FOR IMPLEMENTATION OF FINAL INDOMENT DATED 12:05 2009 PASSED AS "UDGMENT IN REM" IN APPEAL NO 1276 OF 2007

POWER OF ATTORNEY

NAME & OTHER PARTICULARS OF ATTORNEY

Mr Rashid Iqbal Khan Jadoon Advocate IBC Islamabad. Abbott Law Chamber, Office No 06 Ground Floor, Ayub Tanoli lawyer plaza Abbottanad We

1). Sardar Irshad Ali S/O Ali Afsar, SDEO, Tehsil Haveiian, District Aboottabad, E.P No 630/2023

Qazi Masood-ur-Rehman S/O Qazi Ghulam Mani, Seruor * 1 teacher, GHS Pinc Gugran, Haripur, E P No 141 2018

3). Muhammad Haroon S/O Muhammad Ayub, SST GHS hangi. Abbottabad E.P No. 42 2018

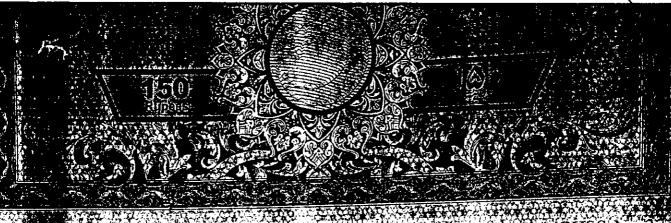
4). Naveed S/O Andur Renman, S.P.E.T teacher. GHSS Bandt Dhundan, Anbottabad, E.P.No. 143/2018

5). Rashid Lateef S.O. Abdur Lateer, Retired Senior Arabic teacher, GHSS Banci Dhundan, Abhottabad, E.P. No. 45, 2018

6. Shahid lybai S/O Shamraiz Khan, Cl teacher. GHS Maira Mandroach, Abbottabad E.P No 14n-2018

Ahad.





- 7). Arshad Khan S/O Mir Afzal Khan Senior C.T teacher GHSS No 3 (English Medium), Abbottabad. E.P No 148/2018
- 8). Muhammad Iqbal S/O Khan Bahadar Khan Retired C.T teacher, GMS Phulwali, Abbottabad. E.P No 149/2018

We, deponents, do hereby solemnly affirm and declare on oath that we appoint above named (Mr Rashid Iqbal Khan Jadoon Advocate) as attorney, to act on our behalf, to appear, plead for us in the titled case in which the same may be tried or heard and any other proceedings arising out of or connected herewith and he would be competent to exercise all the powers which we our self hold as petitioners, he is authorized all powers, to institute case, to submit any kind of application or reply, argue the case, in short, all powers or authority which we are entitled being petitioners, would be transferred to above named attorney through instant power of attorney.

Sworn at Abbottahad on this 07th day of October, 2023.

1) Sardar Irs 1ad Ali CNIC No 13101 1022

CNIC No 13101- 0824655-3

3) Muhammad Haroon

CNIC No 13101-0920920-5

5) Rashid Lateef

CNIC No 13503-0593241-9

7) Arshad Khan

CNIC No.13101-0718940-3

2) Qazi Masood-ur-Rehman CNIC No 13302-0429473-5.

4) Naveed

CNIC No. 13101-0904990-3

6) Shahid Iqbal

CNIC No 13101-0946665-9

Homely

8) Muhammad Icbal

CNIC No 13101-2401093-1

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