Form-A

FORM OF ORDER SHEET

Restoration Application No. 760/2023

Court of_

-	S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
	1	2	3
	· 1	12.10.2023	The application for restoration of Execution
			petition No. 143/2018 received today by registered
			post through Mr. Rashid Iqbal Khan Jadoon Advocate. It
		· · · ·	is fixed for hearing before touring Single Bench at
	*	· ·	A.Abad on . Original file be requisitioned.
		è	By the order of Chairman
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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR. Restoration Application No. 760/2023

CMA No

IN

of 2023

Execution Petition No: 143 of 2018

Naveed S/O Abdur Rehman, S.P.E.T teacher, GHSS Bandi Dhundan, Abbottabad. R/O: Mohallah Musa Zai, Village Mir Pur Kalan, Post Office Mir Pur, 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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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

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, Through

(Rashid Iqbal Khan Jadoon) Advocate IBC Islamabad Attorney Abbottabad.

(Shahzad Shakoor

Petitioner

(Naveed)

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

PESHAWAR. Restoration Application 702 ribuna NO.100 Diary No 8276 CMA No of 2023 Descen 12-10-2023 IN

Execution Petition No: 143 of 2018

Naveed S/O Abdur Rehman, S.P.E.T teacher, GHSS Bandi Dhundan, Abbottabad. R/O: Mohallah Musa Zai, Village Mir Pur Kalan, Post Office Mir Pur, 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,

1) 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 <u>Annexure</u> <u>"A" & "A-1"</u>

3) 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 <u>Annexure "B"</u>

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 with effect from due date, with all back benefits.

(Rashid Iqbal Khan Jadoon) Advocate IBC Islamabad Attorney Abbottabad.

(Naveed)

Petitioner

(Shahzad Shakoor) Advocate High Court Abbottabad

(Muhammad Tanveer)

Through

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

(Naveed) Petitioner

MNexure,

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No: 143 of 2018 Diary No. 71

ervice Tribus 919X

Naveed S/O Abdur Rehman, S.P.E.T teacher, Government Higher Secondary School Bandi Dhundan, Abbottabad. R/O: Mohallah Musa Zai, Village Mir Pur Kalan, Post Office Mir Pur, District, Abbottabad.

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

2 District Comptroller of Accounts, Abbottabad.

3 Director of (Elementary & Secondary Education Department) Khyber Pakhtunkhwa Peshawar.

Secretary to Govt of Khyber Pakhtunkhwa (Elementary & Secondary Education Department) Peshawar.

Respondents

Khutter Fakhtakhwa Service Telbunal

Appellant

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

<u>PRAYER</u>

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Registrar

IT IS RESPECTFULLY PRAYED THAT RESPONDENTS MAY PLEASE BE DIRECTED TO IMPLEMENT THE JUDGMENT DATED 12/05/2009 AND GRANT OF 04 ADVANCE INCREMENTS OF MA W.E.F. 25/04/2000, WITH ALL BACK BENEFITS.

Respectfully Sheweth,

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 <u>Annexure "A" & "B"</u>.

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- 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.
- 3) 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 <u>Annexure "C"</u>
 - 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 04 advance increment of MA w.e.f. 25/04/2000. Copies of withdrawal application and order dated 21/03/2018 are annexed as <u>Annexure "D" & "E"</u>

It is therefore respectfully prayed that respondents may please be directed to implement the judgment dated 12/05/2009 and grant of 04 advance increments of MA w.e.f. 25/04/2000, with all back benefits.

(Naveed) Petitioner in person

VERIFICATION

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

(Naveed) Petitioner in person

Dated 14/5/18

21.10.2020

21/10/2



Petitioner in person present.

E.P. NO 143/2018

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

Annexure A-1

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 in appeal 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.

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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.

(Rozina Rehman) Member (x) Camp Court, A/Abad

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JUDGMENT SHE **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	<u>14.06.2023</u>
-----------------	-------------------

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:-



i. W.P. No.913-P/2014 titled, Muhammad Iqbal and others Vs. Government of Khyber Pakhtunkhwa through Secretary to Government, Finance Department, Peshawar and others.

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

iii. W.P. No.2053-P/2014 titled, Saeed Ullah and others Vs. Government of Khyber Pakhtunkhwu 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

W.P. No.2326-P/2019 titled, Muhammad v. 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

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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".

3. 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.

Arguments heard and record perused.

6. 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 <u>"FECTO Belarus Tractor Ltd Vs. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605), 2013</u>



7. 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



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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 <u>"CPLAs No.525 and 526/2007 decided on</u> 19.07.2007".

9. 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.

10. In view of the above, we, without commenting 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

ligh 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 linz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah

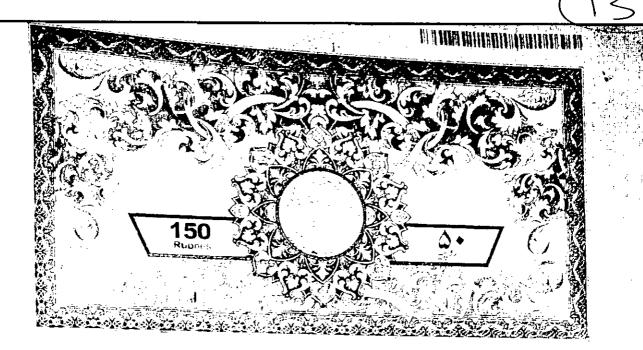
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s.No. 207039 Name of Advocate. DBA NO. TBA NO. BC No. R.s.200/= Ch Muhammad Neseem Finance Secretary District Bal Association ليحد Abybitabar \boldsymbol{o} باعث تح برآنك ے داسطے پیروی د جوابد ہی برائے کم کی تصفی مقدمه بمقام دجه بالأ**لجز**وان م^{ير} كه ميں ہر پيشى پر خود يابذ راچين پختار خاص روبر دعدالت حا الأرويل مقرركما سر لکارے عدالت كرون گا۔ا كرچتر ف كواطارع ب ظر و مدرال نه مور یکے علاوه کسی اور حکیہ يعطيل بيروى كراف كحاذ متددا تشاهون كحاور مقد علاوہ کی حکہ لاوقار ی چھے بی**ن ہو سے پر سفتر کو کو کی نقصا**ن <u>ک</u>ے تو ار ی <u>کے داسطے</u> وقا ساعت ہونے پر مابر 13. 20 وصوف فجته برداختهصاحه إداكرنے بامخنا سی معادضہ کے لانى د ہرتسم كركى ونظير ثابي ايبل تكم مثل کردہ ذات منطور دمقبول ہوگا اڈ 121.21 215 ويبادصون كراني وررسيد د ل کرنے <u>نے کا بھی اختیار ہوگااور کی</u> <u>نے اور ہر</u> درخواست يرد ستخط دتقم ی<u>ے کا بھی</u> ختیار ہوگا دربصورت نے بیر دنجات ت_ المار دولي در رثالتي وراجني نامة وقيضا ادر ہر سم کے بیان ابتناج باقرق باكرفتاري قبل ازكر فتارى داجرائ ذكري جمحاحب ازتجبري صدرابيل مہ مذکور باس کے ی اجتبا (ہوگا کہ مقد موصوف كوبشر طادا مراہ بقر کر سادرا سے وکیل کوبھی ہرام میں کسی جزوکی کارد اورد دران مقدمہ جو کچھ ہر جاندالتوایز ےگاوہ صاحب موصوف وبى اوروبسے إختيارا ی تاریخ پیش سے پہلےادانہ کروں گا تو صاحب موصوف کو پورااختیار ہوگا کہ دہ مقدمہ اصاحب موصوف کو بور کی اقیس کاحق ہوگا۔اگرو کی پروی نہ کریں ادرا لی صورت میں میرا کوئی مطالبہ کمی تسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ 0/09 لېذادكالت نامدككردياب كەسندرىپ-مور خ مضمون وكالت نامه س ليا ب اور الچى طرح سمجھ ليا ہے اور منظور ب دن نوب دکالت نامه کی فوٹو کا 165 De



BEFORE KHYBER PAKHTUNKHWA SERVICE FRIBUNAL PESHAWAR

EXECUTION PETITIONS FOR IMPLEMENTATION OF FINAL JUDGMENT DATED 12:05 2009 PASSED AS THUGMEN. IN REMI IN APPEAL NO 1276 OF 2007

POWER OF ATTORNEY

NAME & OTHER PARTICULARS OF ATTORNEY

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

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 Sardar Irshad Ali S/O Ali Afsar, SDEO, Tehsil Havelian, District Abbottabad, E.P No 630/2023

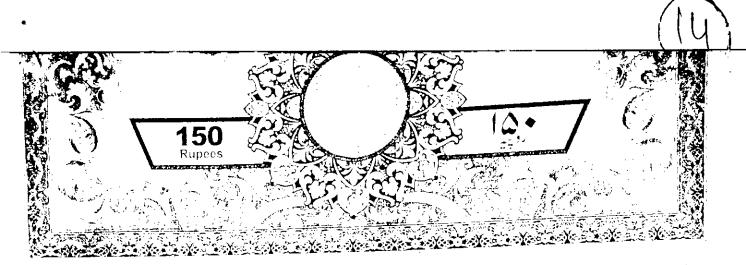
Qazi Masobd-ur-Rehman S/O Qazi Ghulam Jilani, Seuor Ch teacher, GLS Pind Gugran, Haripur E P No 141 2018

Muhammad Haroon S/O Muhammad Ayub, SST GHS ?bangi. Abbottabad E.P No 142 2018

- 4). Naveed S/O Andur Rehman, S.P.E. I teacher, GHSS Bandi Dhundan, Abbottabad. E.P. No. 143, 2018
- 5). Rashid Lateet S.O. Abdul Lateef, Retired Serior Arabic Wacher, GHSS Bandi Dhundan, Abbottabac, E.P. No. 145 2018

6). Shahid 1-bal S/O Shamraiz Khan, U.I wacher, GUS Maira Mandroach, Abbottabad, EP No 1+6/2018





- 7). Atshia Kilan S O Xir Alzal Khar Senior C.T teacher GH8S No 3 (English Viedlam), Aboottabad, E P No 148 2018
- Sull Menters a Lipe SURMan Billadar Khan Roffred Cill terenetic GNS Physical Abnorabadi LP No 149 2018

Will denote the operating science by attent and declare on oath that we appoint above named (Mr Rashid Iqbal Khan Jaduon, Advocate) as attorney, to act on our leaded of the action of the liked case in which the same map for the content of a other proceedings at sing out or or connected herewith and the content of the other iserial, the powers which we out set [201] as before each of a other red at howers, to institute case, to submit any kind of and content of a other set of each institute case, to submit any kind of and content of a other case, it shows all powers or authority which we are content of a other set of the case, it shows all powers or authority which we are content of a other of the case, it shows all powers or authority which we are content of a other of the case, it shows all powers or authority which we are content of a other of the case, it shows all powers or authority which we are content of the other of the case, it shows all powers or authority which we are content of the other of the case, it shows all powers or authority which we are content of the other of the case, it shows all powers or authority which we are content of the other of the case of the power of the other of the other of the case.

Sworn, at Abbottabad on this 07th day of October, 2023. Nothar Thomas A. 2) Uaz Mascod ur-Ruhman CNIC NO COL (INCLESSE) MIC NOT CHARACTERS × . · : <mark>``</mark>п., and Examine 4) Na fed No. 1 112 144 CNIC NO 310 COMPANY Reduction ti Stand Icha 1993 - 1992 - 1999 CARE NOVES TO LOO HOUSE OF Station . Ye Law K C. J. N. 1990 0718 (10.3) s Micampiae Lipa CNIC No 1310 -2401093-1