

947/2015

Mst. Kisan Musahib vs Govt

07.12.2016

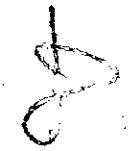
Mr. Taimoor Khan, Advocate for appellant and Mr. Ziaullah, Government Pleader for the respondents present. Learned counsel for appellant submitted order dated 17.10.2016 and stated before the court that grievance of the appellant has been redressed by the respondent-department. He also requested for withdrawal of the appeal. Request accepted. The appeal in hand is hereby dismissed as withdrawn. No order as to cost. File be consigned to the record room.

ANNOUNCED

07.12.2016


(ASHFAQUE TAJ)
MEMBER

I wish draw the instant app
beared for appellant



7-12-16

22.03.2016

Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl. A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 13.4.2016 before S.B.


Chairman

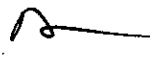
13.4.2016

Counsel for the appellant and Mr. Daud Jan, Supdet. alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 04.08.2016.


Chairman

04.08.2016

Counsel for the appellant and Mr. Daud Jan, Superintendent alongwith Additional AG for respondents present. Learned counsel for the appellant submitted rejoinder, copy whereof handed over to learned Additional AG. To come up for arguments on 7-12-16 before D.B.


Member


Member

27.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the salary of the appellant was withheld regarding which she adopted the prescribed procedure including submission of service appeal No. 5/2013 wherein the respondents were directed to dispose of the departmental appeal of the appellant within 30 days. That on the basis of the said order of the Court dated 12.3.2014 the departmental appeal was decided on 26.6.2015 communicated to the appellant on 31.7.2015 where-after the instant service appeal has been instituted on 21.8.2015.

Appellant Deposited
Security & Process Fee



That the allegations of not performing duty by the appellant are devoid of merits and no inquiry whatsoever was conducted and salary of the appellant withheld without any lawful or factual justification.

14-8-15
71-8-15

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.11.2015 before S.B.


Chairman

26.11.2015

Agent of counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 22.3.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 947/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21.08.2015	<p>The appeal of Mst. Kiran Musahib presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	24-8-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>27-8-15</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

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

Appeal No. 947 /2015

Mst. Kiran Musahib

V/S Director Education (FATA) etc.

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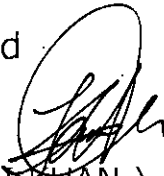
APPELLANT

THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

And



(TAIMUR ALI KHAN)
Advocate, Peshawar.

①

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

Appeal No. 947 /2015

**A.W.F. Province
Service Tribunal**

Diary No. 984

Dated 21-8-2015

Mst. Kiran Musahib, PST,
Government Middle School,
Safrafaz Kili, Khyber Agency.

APPELLANT

VERSUS

1. The Director of Education, (FATA), Khyber Pakhtunkhwa, Peshawar.
2. The Agency Education Officer, Khyber Agency at Jamrud,
3. The Assistant Agency Education Officer (Female), Khyber Pakhtunkhwa at Jamrud.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 26.06.2015, COMMUNICATED IN TRIBUNAL ON 31.07.2015, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR PAYMENT OF SALARIES FROM MARCH, 2012 TO MARCH, 2013 HAS BEEN REGRETTEED FOR NO GOOD GROUNDS.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 26.08.2015 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO RELEASE THE SALARIES OF THE APPELLANT FROM MARCH, 2012 TO MARCH, 2013 WITH ALL BACK AND CONSEQUENTIAL BENEFITS/ARREARS . ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE, THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Asst. Registrar
21/8/15

RESPECTFULLY SHEWETH:

1. That the appellant has been performing the duties as PST teacher in the Education Directorate (FATA) since 2003.
2. That lastly, the appellant was transferred and posted at GGMS Sarfaraz Kili, Jamrud and the appellant took over charge on 8.9.2011. Copy of Charge Report is attached as Annexure-A.
3. That in the recent past, the law and order situation in Bara were became worst due to which the school became closed. In such like situation, the AAEO Khyber Agency telephonically directed the appellant to go another school and as such the appellant was performing the duties as per verbal direction of the AAEO Khyber Agency in various schools.
4. That despite obeying verbal directions the appellant's salaries was stopped for which the appellant also informed the Director of Education (FATA) Department through her application but no action was taken on that applications. Copy of Application is attached as Annexure-B.
5. That the appellant made another complaint to the Director Education (FATA) and by that complaint, the AAEO Khyber Agency, Jamrud got annoyed and called an explanation from the appellant through the AEO Khyber Agency which was properly replied by the appellant. Copies of Explanation and Reply are attached as Annexure-C and D.
6. That during the above noted tussle between the AAEO Khyber Pakhtunkhwa and the appellant, the appellant's salaries for April, 2013 has been released but the pay from March, 2012 to March, 2013 was not released without any cogent reasons.
7. That at last, the appellant filed an appeal for release of her pay on 4.9.2013 and waited for statutory period of 90 days but no reply has been received to the appellant, therefore, the appellant filed Service Appeal No.05/2013 in this Honourable Tribunal. Copy

of Departmental Appeal and Service Appeal No.05/2013 are attached as Annexure-E & F.

- 8. That the Honourable Tribunal remanded the appeal of the appellant to the respondent department to decide the same within 30 days in its Judgment dated 12.03.2014. Copy of Order dated 12.03.2014 is attached as Annexure-G.
- 9. That the respondent department has not decided the appeal of the appellant within stipulated time, thereafter the appellant filed Execution Application No.27/2014 in this Honourable Court. Copy of Execution Appeal is attached as Annexure-H.
- 10. That during the pendency of Execution Application in this Honourable Tribunal, the respondent department regretted the Departmental Appeal of the appellant on 26.06.2015 and handed over the copy of that order in the Tribunal on 31.7.2015, therefore, the counsel for the appellant/petitioner requested to this Honourable Court for disposal of the petition having become infructuous. The Honourable Tribunal disposed off the Execution Petition on 31.07.2015. Copies of Impugned Order and Tribunal Order dated 31.07.2015 are attached as Annexure-I & J.
- 11. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the others:

GROUND:

- A) That the impugned order dated 26.08.2015 whereby the departmental appeal of the appellant has been regretted is against the law, rules, fact, norms of justice and material on record.
- B) That the appellant has not been treated according to law and rules and has been deprived from her due rights of her salaries in an arbitrary manner.
- C) That no charge sheet, statement of allegations, show cause notice has been served on the appellant, nor any regular enquiry conducted against the appellant regarding her absence or stopping her

salaries, thus, the appellant has been condemned unheard.

- D) That the appellant is still on the strength of the Education Department till date and as per Section-17 of the Civil Servant Act, the appellant is entitled to full salaries of the PST post.
- E) That no reasons are mentioned in the final rejection order, which is the violation of the Apex Court's verdict reported in 1991 SCMR-2330.
- F) That the appellant fully performed her duties for the disputed period and it was her legal right to have salaries for period.
- G) That the appellant has not been treated according to law and rules and has been deprived from the benefits of her pay which amounts to force labour which is also prohibited in the Constitution of the country.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT *Kiran*
Mst. Kiran Musahib

THROUGH:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

And
Taimur Ali Khan

(TAIMUR ALI KHAN)
Advocate, Peshawar.

Charge Report

Annexure ^A

(3)

I beg to report for duty at G.G.M. School Sarfaraz Kaley Jamrud on dated 08-09-2011 by the verbal order of Miss Waheeda (A.E.O) female Jamrud Khyber Agency.

KIRAN MUSAKHIB

P.T.C

Khidan
P.T.C

08-09-2011

G.G.M. School
Sarfaraz Kaley
Jamrud.

Shahida Afzal

Handwritten:
Handwritten:
G.G.M. Sarfaraz Kaley
Khyber Agency

E.T.C
E

ATTESTED



"B" *Abdullah*

کریٹ جناب ڈائریکٹر آف آپریشنز فائنل لیٹرز اور کمر

6

جناب عالی

دیپانے لڑائی کی جاتی ہے میں کورنٹ منڈل سکول دل ضلع بارہ بکھوری
میں ڈیوٹی انجام دیتی ہوں۔ بارہ کے حالات فرام پور کی وجہ سے بارہ کے سکول بند
ہوتے ہیں جس پر AA-E-O بارہ مجھے بار بار کہتی ہے کہ آپ اس سکول جاتے اور کہی
کہیں یہ اس سکول جاتے ہیں جب اس سکول جاتی ہوں تو مجھے پتہ نہیں ہے کہ
اس سکول کو چھوڑ دے آپ اس دوسرے سکول میں جاتے ہیں۔

میں جلد سے پتہ چکھنے کی کوئل دال ہوں۔ مجھے خون آہ AA-E-O فائنل
ہے جسے کیا کہہ آپ اس سکول جاتے اور چارج رپورٹ لار تنخواہ سکول ہوگی۔
اس پر میں نے سکول سے چارج رپورٹ منڈل سکول کو دی ہے۔ کوریجور بن کر جسے دو ماہ
سے میں تنخواہ بند ہے۔ میں اس وقت کورنٹ منڈل سکول سے فراد کھلے جلد سے میں ڈیوٹی پورا انجام دے
رہی ہوں

AA-E-O سے ملنے سے طرح کی دیکھنا رہی ہے۔ اور اپنے عہدہ کا نام جانتے
شمال کر رہی ہے اور بے وجہ مجھے پتہ نہیں اور یہ اسان کر رہی ہے

لیڈ آپ صاحبان کے نوٹس میں یہ بات لانا چاہیہ ہوں
بصورت دیگر میں عدالت کا دروازہ کھولنے پر دستک ہوگی۔ لہذا اپنے پتہ کے روز

کرنا صاحب آفر میں
کورنٹ منڈل سکول دل ضلع بارہ بکھوری

140
21/10/2011

Handwritten notes in Urdu and English:
AGEO
P. deploy
al. information
al. information

ATTESTED

Signature



C (7)
E
~~Amir~~

KHYBER AGENCY
AGENCY EDUCATION OFFICE
PHONE: 091-5820584 FAX: 091-5820584
No. 7475
Date 18/1/2011

To

Mst: Kiran Masahib PTC,
GGMS Wali Khel
Tehsil Bara Khyber Agency.

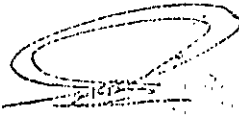
Subject: - EXPLANATION.
Memo

It has been reportedly come in the notice of the undersigned with regrets that you did not take interest in your duties and oftenly visits the offices. Whenever your duty station has been visited/ inspected, you have been found absent from duties. You have also been transferred to GGMS Wali Khel as sentence as you were not serious and sincere with your job.

It is reminded that verbal orders have never been passed on to any one so for as every orders is being issued in written and you were redeployed to GGMS Gul Abad but on your refusal, you were verbally directed to perform your duties at GGMS Sarfaraz Killi Jamrud.

Moreover, some one with the name of Zakir Hussain has telephonically threatened AAEO (F) Bara-not to report and compel you for duties which is quite against the rules and conducts.

You are hereby directed to explain your position within three days with the receipt of this letter, in case of failure, Departmental action will be taken against you. Further, more all the Bara-Girls schools have been reopened since 10.10.2011 and are advised to report your school and fulfill your departmental responsibilities.


AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD


Endst: No. _____

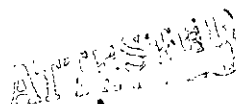
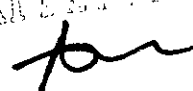
Dated _____ 2011

Copy forwarded to the:

- 1 Director Education FATA, at Peshawar.
- 2 AAEO concerned local office.
- 3 Superintended local office.

AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD

e.T.C


8
Annexure

8

November 4, 2011

8

To

Mr. Hashim Khan
Agency Education Officer
Khyber Agency At Jamrud.

EXPLANATION

Dear Sir,

With reference to your letter No 9476, dated October 18, 2011 regarding the subject cited above, received by me today dated ~~October-3rd~~ ^{Nov-}, 2011 through mail.

I would like to explain my position as under:

Refer to your first Para;

I would bring it to your kind notice that I was not sent to GGMS Wali Khel as sentence rather I completed more then three years term in GGPS Yar Gul Khel Kalay Kahjori Bara where I was appointed as PTC Teacher since September 17, 2003. Upon completion of my term I was transferred to GGMS Wali Khel on November 11, 2007, where I performed my duties in a professional manner and with diligence. A copy of the said transfer order is enclosed which itself explain that it was a routine/regular transfer

Further more reference to your second Para;

My detailed application /complaint against the AAEO (F) Bara is available for your ready reference in this regard. Which has been already submitted to you? Moreover, as per your explanation call in which you have mentioned that "every order is being issued in written" I have a question. Is there any order available with you for my redeployment to GGMS Gul Abad? The answer is NO, I was neither provided with the written order nor verbal order for the said school.

1/2

e.t.c
J

ATTESTED

[Signature]

REQUEST

9 21

Dear Sir,

I was brought up in a manner to serve the country and educate my locals in FATA. I am performing my duty with professionalism and without negligence. No one has ever asked for any kind of explanation in my eight years service. I have a lot of regards for you but regret to say that you are still not well informed/justified regarding my case. Because I am the aggrieved party and I submitted my application/complaints to you on October 7, 2011 against AAEO F (Bara), but you have called my explanation which is against ethics, rules and conducts. This timing has made the intent of this explanation QUESTIONABLE? My salaries are still blocked and I am being mentally tortured by your subordinate AAEO F (Bara) with this explanation call. Therefore, you are once again requested to please release my salaries so that I can continue my service with a peace of mind and do not compel me to go to the court and media.

Regards,

Kiran Musahib

Kiran Musahib
PTC Teacher
Wali Khel School
Tehsil Bara Khyber Agency.

Resident:

House No 524, Street 20, Sector F-5
Phase 6, Hayatabad, Peshawar

Copy To;

1. Director Education FATA, Peshawar
2. A.A.E.O (F) Bara
3. Superintendent Local

C.T.E
[Signature]

[Signature]
7/11/11

2/2

ATTESTED

[Signature]

محکمہ تعلیم و ترقی
گورنمنٹ ہائی اسکول
پ.ت.سی 0419/13

صاحب عالی

مردانہ گذارش کی جاتی ہے کہ میں

P.T.C. محمد خیر اچھی کمی سے فانی ہوں۔

گورنمنٹ ہائی اسکول ملی خیر (بارہہ) پ.ت.سی 0419/13
(Permanent Post) ہے۔ اور میں نے مس وحیدہ (0419/13)

کے (Verbal Order) پر ستمبر 2011ء کو گورنمنٹ ہائی اسکول
سروراز کے محروم میں ڈیوٹی سنبھالی

۱۰ ماہ ڈیوٹی کرنے کے باوجود میری تنخواہ میں اضافہ نہیں ہوا
میں وحیدہ نے سنبھال لی۔

میں دسمبر 2011ء میں مجھے ۱۰ ماہ کی تنخواہ ملنے لگی
دی گئی ہے پھر جنوری 2012ء اور ۶ مئی 2012ء کی

تنخواہ لینے کے بعد، تاریخ 2012ء سے تاریخ 2013
تک میں وحیدہ نے Personal ہونے کی وجہ سے میری
تنخواہ سنبھال لی۔

آج تک مجھے یہ ایک سال کی تنخواہ نہیں ملی۔ یہ
آپ کے گذارش ہے کہ مجھے ایک سال کی تنخواہ
ادا کی جائے۔

آپ کی بے حد شکر رہوں گی۔

میں صاحب پ.ت.سی

Ghazan
میر

محمد
مدرس

04/19/13
04/19/13
04/19/13

گورنمنٹ ہائی اسکول (بارہہ)
(موجودہ اسکول) محمد خیر اچھی

for

① F ②

③

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

Appeal No. _____/2013

Mst. Kiran Musahib, PST,
Government Middle School,
Sarfaraz Kili, Khyber Agency.

APPELLANT

VERSUS

1. The Director of Education, (FATA), Khyber Pakhtunkhwa, Peshawar.
2. The Agency Education Officer, Khyber Agency at Jamrud.
3. The Assistant Education Officer (Female), Khyber Agency at Jamrud.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974
AGAINST NOT PAYMENT OF SALARIES FROM
MARCH, 2012 TO MARCH, 2013 AND AGAINST NOT
TAKING ANY ACTION ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN STATUTORY
PERIOD OF 90 DAYS.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE
RESPONDENTS MAY BE DIRECTED TO PAY
SALARIES TO THE APPELLANT FROM MARCH, 2012
OF MARCH, 2013 WITH ALL CONSEQUENTIAL
BENEFITS. ANY OTHER REMEDY, WHICH THIS
AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE
THAT MAY ALSO BE AWARDED IN FAVOUR OF
APPELLANT.

ATTESTED



RESPECTFULLY SHEWETH



1. That the appellant has been performing he duties as PST teacher in the Education Directorate (FATA) since 2003.
2. That lastly, the appellant was transferred and posted at GGMS Sarfaraz Kili, Jamrud and the appellant took over charge on 8.9.2011. Copy of Charge Repot is attached as attached as Annexure-A.
3. That in the recent past, the land order situation in Bara were became worst due to which the school became closed. In such like situation, the AAEO Khyber Agency telephonically directed the appellant to go another school and as such the appellant was performing duties as per verbal direction of the AAEO in various schools.
4. That despite obeying verbal directions the appellant's salaries was stopped for which the appellant also informed the Director Education (FATA) though his application but no action was taken on that application. Copy of Application is attached as Annexure-B.
5. That the appellant made another complaint to the Director Education (FAT) and by that complaint the AAEO Khyber Agency, Jamrud got annoyed and called an explanation from the appellant through the AEO Khyber Agency which was properly replied by the appellant. Copies of Explanation and Reply are attached as Annexure-C and D.
6. That during the above noted tussle between the AAEO Khyber Agency and the appellant, the appellant salaries from April, 2013 has been released but the pay from March, 2012 to March 2013 was not released without any cogent reasons.
7. That at last, the appellant filed an appeal for release of her pay on 4.9.2013 and waited for statutory period of 90 days but no reply has been received to the appellant, hence the present appeal on the following grounds amongst the other. Copy of Appeal is attached as Annexure-E.

ATTESTED

GROUNDS:

13

- A) That not paying the salaries of the appellant from March, 2012 to March, 2013 and not taking any action on the departmental appeal of the appellant within statutory period of 90 days which is against the law, rules, norms of justice and material on record.
- B) That the appellant has not been treated according to law and rules and has been deprived from her due rights of her salaries in an arbitrary manner.
- C) That no charge sheet, statement of allegations, shows cause notice has been serviced on the appellant, nor any regular enquiry conducted against the appellant, thus, the appellant has been condemned unheard.
- D) That the appellant is still on the strength of the Education Department till date and as per Section-17 of the Civil Servant Act, the appellant is entitled to full salaries of the PST post.
- E) That even not deciding the appeal of the appellant within the statutory period of 90 days is an arbitrary act on the part of the respondents and also violation of the Superior Court's Judgment reported as 2011 SCMR Page-1.
- F) That the appellant has not been treated according to law and rules and has been deprived from the benefits of her pay which amounts to force labour which is also prohibited in the Constitution of the country.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

ATTESTED



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

14

APPELLANT *Kiran*
Mst. Kiran Musahib

THROUGH:

M. Asif Yousafzai

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

ATTESTED

[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

G 15

Appeal No. 05 /2013



Mst. Kiran Musahib, PST,
Government Middle School,
Sarfaraz Kili, Khyber Agency.

09
02-01-14

APPELLANT

VERSUS

1. The Director of Education; (FATA), Khyber Pakhtunkhwa, Peshawar.
2. The Agency Education Officer, Khyber Agency at Jamrud.
3. The Assistant Education Officer (Female), Khyber Agency at Jamrud.

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST NOT PAYMENT OF SALARIES FROM MARCH, 2012 TO MARCH, 2013 AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

12.03.2014

Counsel for the appellant present. Preliminary arguments heard. Since March, 2012 to March, 2013, the appellant has not been paid monthly salary for which he filed an application before the Director of Education, (FATA), Khyber Pakhtunkhwa, Peshawar on 04.09.2013, which has not been responded. The appellant filed the instant appeal on 02.01.2014. Therefore, in view of the fact that the appeal has been entered in the institution register read with Rules-27 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 the appeal is remanded to the Director of Education, (FATA), Khyber Pakhtunkhwa, Peshawar (respondent No.1) to decide the same within 30 days in accordance with law. So that the appellant if still aggrieved, may adopt proper course of action in accordance with law. The Service Appeal is disposed of on the above lines in limine. File be consigned to record with no order as to cost. Copy of this order be communicated to the respondents for information and necessary action.

ANNOUNCED
12-03-2014

sd/
Member

ATTESTED

Certified to be a true copy
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Date: 18.3.2014
Date: 18.3.2014
Date: 18.3.2014

H (16)

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

Execution Appeal No. _____/2014
In Service Appeal No.5/2013

Mst. Kiran Musahib, PST,
Government Middle School.
Sarfaraz Killi, Khyber Agency.

(APPELLANT)

VERSUS

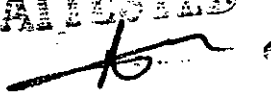
1. The Director of Education, (FATA), KPK, Peshawar.
2. The Agency education Officer, Khyber agency at Jumrad.
3. The Assistant Education Officer(Female), Khyber Agency at Jamrud.

(RESPONDENTS)

**EXECUTION APPIICATION FOR DIRECTING
THE RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 12.03.2014 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

RESPECTFULLY SHEWETH:

1. That the appellant filed an Appeal Bearing No.05/2013 against not payment of salaries from March 2012 to March 2013.
2. That the said appeal was finally heard by the Honourable Tribunal on 12.03.2014 and the Honourable Tribunal was kind enough to accept the appeal and remanded the appeal to the Director of Education (FATA), Khyber Pakhtunkhwa, Peshawar (respondent No.1) to decide the same within 30 days in accordance with law.

ATTESTED


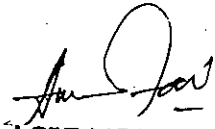
- 3. That since the announcement of the judgment, the appellant waited for more than 30 days to implement the judgment of this Honourable Tribunal by respondent No.1 but the respondent no.1 has not decide the case within 30 days according to the judgment of this Honourable Tribunal.
- 4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
- 6. That the petitioner has having no other remedy to file this Implementation appeal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment of this august Tribunal in letter and spirit and issue order to release the salaries of the appellant from March 2012 to March 2013. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of appellant.

APPELLANT

Kiran Musahib

THROUGH:


(M. ASIF YOUSAFZAI)

&

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

ATTESTED


AFFIDAVIT:

It is affirmed and declared that the contents of the execution ~~appeal~~ ^{application} are true and correct to the best of my knowledge and belief.

[Signature]
DEPONENT

ATTESTED
[Signature]



FATA SECRETARIAT
DIRECTORATE OF EDUCATION

WARSAK ROAD PESHAWAR, PAKISTAN
PHONE: 091-9210166 FAX 091-9210216

NO. 7191
DATE PESH: THE 11/2015

26/10/15

I 19

To

Mst: Kiran Masahib
Govt: Middle School
Sarfaraz Killi, Khyber Agency.

Subject:- Departmental Disposal of Appeal No. 5/2014 Mst: Kiran Masahib-Vs-Director Education FATA.

MEMO:-

I am directed to refer to the subject noted above and to inform you that your appeal/Representation is regretted in the light of inquiry conducted and report received vide letter 8305 dated, 28-10-2014 from Agency Education officer wherein it was recommended to deduct/refund salary of your absence period, therefore your salary has been refunded through proper challan under proper head of account.

In the light of above explained position, your departmental appeal for release of pay is hereby regretted.

Endst: No. 7192-93 dated, 26/10 2015.

e/c
Assistant Director (Litigation)
Directorate of Education FATA.

Copy forwarded to the:

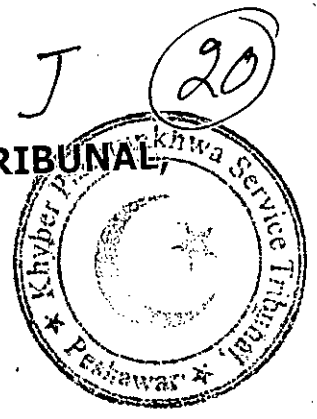
1. Agency Education officer Khyber Agency.
2. PA to Director Education FATA.

co/c
Assistant Director (Litigation)
Directorate of Education FATA

*communicated
in court on 31/7/15*

ATTESTED
[Signature]

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



Execution Appeal No. 27 /2014
In Service Appeal No.5/2013

368
09-05-2014

Mst. Kiran Musahib, PST,
Government Middle School.
Sarfaraz Killi, Khyber Agency.

(APPELLANT)

VERSUS

1. The Director of Education, (FATA), KPK, Peshawar.
2. The Agency education Officer, Khyber agency at Jumrad.
3. The Assistant Education Officer(Female), Khyber Agency at Jamrud.

(RESPONDENTS)

**EXECUTION APPIICATION FOR DIRECTING
THE RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 12.03.2014 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

Copies to Appellate Code
Khyber Pakhtunkhwa Service Tribunal
Peshawar

31.07.2015

Counsel for the petitioner and Mr. Daud Jan, Supdt. alongwith Mr. Kabirullah Khan Khattak, Assistant A.G for respondents present. Copy of order dated 26.6.2015 submitted by representative of the respondents, a copy whereof also provided to counsel for the petitioner.

In the light of the copy of the afore-stated letter, learned counsel for the petitioner requested for disposal of the petition having become infructuous. Disposed of accordingly. File be consigned to the record.

Sd/-
Chairman

Date of Presentation of Application 31.07.2015
Number of Words 400
Copying Fee 4
Total 404
Name of Officer Mst. Kiran Musahib
Date of Completion of Copy 31.07.2015
Date of Delivery of Copy 31.07.2015

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Kiran Musalib (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

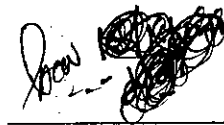
Education Deptt: (FATA) (Respondent)
(Defendant)

I/We Kiran Musalib

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar,** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

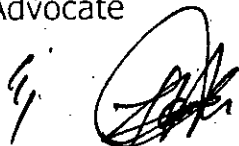
I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 21-8 /2015


Kiran
(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate


TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 947/2015

Mst: Kiran Musahib PST GMS Sarfaraz Killi Khyber Agency.....Appellant.

VERSUS

1. The Director Education FATA Warsak Road Peshawar.
2. The Agency Education Officer Khyber Agency at Jamrud.
3. The Assistant Agency Education Officer (Female) Khyber Agency at Jamrud.....Respondents.

Para-wise comments on behalf of respondent No: 1, 2 & 3

Respectfully Sheweth:

Preliminary Objection

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. That the appeal is barred by law and no departmental appeal is made to the competent authority against the impugned order. Hence not maintainable under Section-4 of Service Tribunal Act.

On Facts:

1. No comments. Pertains to record.
2. No comments. Pertains to record.
3. Subject to proof. No such direction was issued.
4. Incorrect. On account of willful absence from duty the appellant was served with the explanation notice dated 18/10/2011 by the Agency Education Officer Khyber Agency and was also directed to perform duty but even then the appellant did not perform her duty (Copy of explanation is attached as Annexure-A).
5. Incorrect. Proper inquiry has been conducted by the Competent Authority regarding the absenteeism of the appellant. The inquiry Officer recommends that the Agency Education Officer be directed to pay the salaries of the appellant on the basis of performance of her duties as she has been remained absent from her duty (copy of inquiry report is attached as Annexure-B).
6. Incorrect. The salary of the appellant has not been stopped but it is deducted/refunded for her absence period after recommendation of the inquiry officer.
7. No comments. Pertains to record.
8. No comments. Pertains to record.
9. No comments. Pertains to record.
10. Correct. To the extent that the appeal of the appellant has been regretted in light of inquiry conducted and report received vide letter 8305 dated. 28/10/2014 from Agency Education Officer Khyber Agency wherein it was recommended to deduct/refund the salary of the appellant for the absence period. The salary has been refunded through proper challan under proper head of account (copy attached as Annexure-C).
11. No comments. However reply of grounds is as under.

Grounds:

- A. Incorrect. The case has been dealt by the Competent Authority in accordance with law/rules. All codal formalities i.e explanation, proper inquiry have been fulfilled by the Competent Authority.
- B. Incorrect. Due to willful absence from her duty the appellant is not entitle for the salary of absence period as recommended by the enquiry officer.

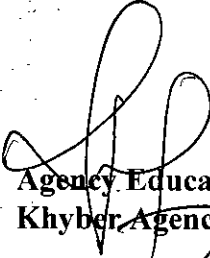
- C. Incorrect. All codal formalities were fulfilled.
- D. Incorrect. All Govt: Employees including appellant are bound to perform their duties according to instruction/rules given by the Govt. from time to time in the interest of Public Service and for the smooth running of the Department. No one is allowed to violate the Govt: rules/regulations.
- E. Incorrect. The appeal of the appellant is regretted in light of inquiry report received vide letter No. 8305 dated 28/10/2014 (copy attached as Annexure-D).
- F. Incorrect. In light of inquiry report the appellant did not perform her duty therefore she is not entitle for salaries.
- G. Incorrect. As explained in Para-D above.
- H. Respondents are also seek permission to advance other grounds and proofs at the time of arguments.

In light of the above explained position it is humbly prayed to please dismiss the appeal with cost.

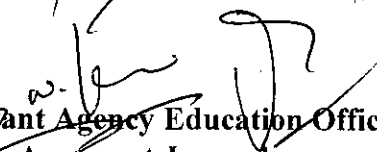
Respondent NO. 1


Director Education FATA

Respondent NO. 2


Agency Education Officer
Khyber Agency

Respondent NO. 3


Assistant Agency Education Officer
Khyber Agency at Jamrud

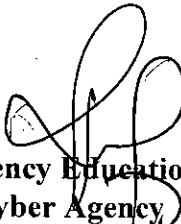
AFFIDAVIT

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our Knowledge and belief that nothing has been concealed from this Honorable Tribunal.


Respondent NO. 1


Director Education FATA

Respondent NO. 2


Agency Education Officer
Khyber Agency

Respondent NO. 3


Assistant Agency Education Officer
Khyber Agency at Jamrud



FATA

Annex: A

3

KHYBER AGENCY
 AGENCY EDUCATION OFFICE
 PHONE: 091-5820584 FAX 091-5820584
 No: 7476
 Date: 18/10/2011

To

Mst. Kiran Masahib PTC,
 GGMS Wali Khel
 Tehsil Bara Khyber Agency

"A"
 B

Subject: - EXPLANATION.
 Memo

It has been reportedly came in the notice of the undersigned with regrets that you did not take interest in your duties and oftenly visits the offices. Whenever your duty station has been visited/inspected, you have been found absent from duties. You have also been transferred to GGMS Wali Khel as sentence as you were not serious and sincere with your job.

It is reminded that verbal orders have never been passed on to any one so far as every orders is being issued in written and you were redeployed to GGMS Gul Abad but on your refusal, you were verbally directed to perform your duties at GGMS Sarfaraz Killi Jamrud.

Moreover, some one with the name of Zakir Hussian has telephonically threatened AAEO (F) Bara not to report and compel you for duties which is quite against the rules and conducts.

You are hereby directed to explain your position within three days with the receipt of this letter, in case of failure, Departmental action will be taken against you. Further more all the Bara, Girls schools have been reopened since 10.10.2011 and are advised to report your school and fulfill your department responsibilities.

AGENCY EDUCATION OFFICER
 KHYBER AGENCY AT JAMRUD

of

Dated 28-10 2011

Endst No: 7472-29

Copy forwarded to the:

- 1 Director Education FATA, at Peshawar.
- 2 AAEO concerned local office.
- 3 Superintended local office.

M. Shabir

(Signature)
 T.T

S/S Farid Killa Jabbar

(Signature)

AGENCY EDUCATION OFFICER
 KHYBER AGENCY AT JAMRUD

300

Report Annexure - B

OFFICE OF PRINCIPAL GOVT. ELEMENTARY COLLEGE JAMEUD KHYBER
AGENCY

(5)

N
"B"

Enquiry report against Mst: Waheeda AAEO (Female) Bara Khyber Agency

Introduction:-

Mst: Kiran Masahib PTC GGPS Wali Khel Tehsil Bara had lodged a complaint against her AAEO (Female) Bara Khyber Agency addressed to AEO Khyber Agency and thereof copy of the same complaint endorsed to GIT Khyber Pakhtunkhwa (Annexure A). There after the GIT also sent the case to Director Education FATA at Peshawar for redressed vide GIT No. 13-2/GIT/783-85 dated 14.10.2011 (Annexure B). The Director Education FATA appointed/directed the undersigned to probe into the matter vide Director Education FATA No. 18068-70 dated 20.10.2011 (Annexure C).

History of the case

Mst: Kiran Masahib PTC was working at GGMS Wali Khel Bara. Due to law and order situation in Tehsil Bara, all the Education Institutions were closed in Tehsil Bara in Sep: 2009. In April 2010, the teachers working in the schools of Tehsil Bara, were redeployed in Tehsil Jamrud and Landi Kotal.

Kiran Masahib PTC was redeployed at GGMS Gul Abad Tehsil Jamrud vide AEO Khyber No. 2134-37 dated 19.04.2010 (Annexure D) but she did not submit and ensured her arrival for duties at the said station.

Kiran Masahib PTC in here written complaint has stated that she used to Pay Rs, 3000/- monthly to Miss Waheeda AAEO (Female) for the purpose that she had engaged another temporary teacher for duty in her place and she ~~was~~ enjoyed this practice for 10 months. She has also complained in written that her salary had been stopped as revenge when the demand of the said AAEO (E) increased.

Mechanism of the enquiry

A questionnaire method was adopted/ used for conducting the enquiry. Questionare were prepared for the plaintiff and respondent and then the questionares and replies were served for finding the facts (Annexure F&G).

Findings


1. Kiran Masahib PTC was redeployed at GGMS Gul Abad Jamrud vide AEO Khyber letter No. 2134-37 dated 19.04.2010 as Annexure (D) but she did not resume her duty at the new station.
2. As per replies of the AAEO she was informed through the center Incharge to resume her duties but she willfully remained absent and did not join GGMS Gul Abad for duties.
3. After redeployment, Mst Kiran PTC had joined her duty for the first time at GGMS Sarfaraz Killi Jamrud w.c.f 09.09.2011 as evident from her replies (Annexure E).

6

4. As per the allegation of payment of Rs, 3000/per month to AAEO (Female) Bara, Mst: Kiran PTC could not produce any authentic evidence to prove the alleged charge as Kiran PTC herself told that she used to pay the said amount to AAEO through her children not directly.
5. AAEO Miss Waheeda has refuted the charges in written in her replies in the questionnaire (Annexure F)

Recommendations

Agency Education Office Khyber may be asked / directed to pay the salaries to the plaintiff on the basis of performance of duties as the wages are being paid to those who perform duties and the complainant has been remained absent from duties.


V/PRINCIPAL
GOVT. ELEMENTARY COLLEGE
JAMRUD KHYBER AGENCY

Central

1103

CSA/13/275 PS/1407/2010 (7/11/10)

(This portion to be transmitted by the Bank Agent to the Treasury Officer in support of the credit in his daily account)

3234

To

THE MANAGER, STATE BANK OF PAKISTAN.

B. 96/221 - Ninety Six Thousand and 200/-

State Bank of Pakistan
SBP BSC (Bank) - Cash
RECEIVED IN CASH
dated the 20th of 2013

Received from the bearer the sum of Rs. 96,221/-

to be credited to Government account under the head C.O. 2814

on account of Salary of pay in S/O Kisan Musahib

Head of Account
Verified
Agency
Khyber Pakhtunkhwa

Signature and full official designation of the officer ordering the money to be paid in.

Central STATE BANK OF PAKISTAN

dated the 20th of 2013

Received from the bearer Agency of Khyber Pakhtunkhwa
the sum of Rs. 96,221/-

to be credited to Government account under the head C.O. 2814

on account of Salary of pay in S/O Kisan & Musahib

Manager

This portion to be returned to the issuer received by the Agent.

Note - The Bank Agent is instructed not to receive money unless both portion the invoice are carefully and clearly filed in.

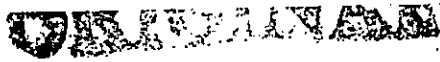
See reverse

Agency Education Officer
Khyber Agency at Jamrud

Head of Account

Agency Officer
Khyber Pakhtunkhwa

81



GS&PD SWFP.275 F.S. 1,000 Pds of 1001. 10.10.2001(7)AID-1

FGAAO KJ 12

(This portion to be transmitted by the Bank Agent to the Treasury Officer in support of the credit in his daily account)

To Rs 100528

STATE BANK OF PAKISTAN
RECEIVED IN CASH

03 OCT 2012

dated the of 20

Head Received from the bearer the sum of Rs. 100528

To be credited to Government account under the head C-0 2014
on account of Recovery of Pay in 24a Kiran Musahib

Assistant Accounts Officer
Khyber, Jamrud

Signature and full official designation of
officer ordering the money to be paid
Agency Education Officer
Khyber Agency at Jamrud

HMP

STATE BANK OF PAKISTAN

Received from the bearer the of 20

Received from the bearer Agency Education Officer Khyber

the sum of Rs. 100528
to be credited to Government account under the head C-0 2014

STATE BANK OF PAKISTAN
RECEIVED IN CASH

03 OCT 2012

This portion to be returned to the payee received by the Agent.

Note - The Agent is instructed to receive money unless both portion the invoice is properly cleared.

See reverse

Assistant Accounts Officer
Khyber, Jamrud

Agency Education Officer
Khyber Agency at Jamrud

HMP

Signature
Agency Education Officer
Khyber, Jamrud

2001(7)AID-1

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20

20

20

Manager

cent.

tion the

Education

Agency at

81