

Ep 224/17

11.04.2019

Nemo for petitioner. Addl. AG on behalf of the respondents present.

On 07.03.2019 notice was required to be issued to the petitioner for appearance today. The record shows that notice was duly issued, however, no one is in attendance to represent the petitioner. The execution proceedings in hand are, therefore, consigned. The petitioner may, however, have the proceedings restored if any portion of his grievance has remained un-satisfied.

Chairman 

ANNOUNCED
11.04.2019

02.01.2019

Petitioner in person present. Mr. Kabirullah Khattak, Additional AG present. Representative of the respondents is not present therefore, notice be issued to respondents with the direction to direct the representative to attend the court on the next date positively. Adjourned. To come up for further proceeding on 07.03.2019 before S.B.


Muhammad Amin Khan Kundi
Member


07.03.2019

Learned AAG present and stated that the present execution petition is not maintainable as the petitioner was not a party to the judgment of this Tribunal in question. Today the petitioner appeared before this Tribunal in the present case however when the case was called he did not turn up. Adjourn. Notice be issued the petitioner for 11.04.2019. To come up for further proceedings on the date fixed.


Member

16.08.2018

Neither petitioner nor his counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Case to come up for further proceedings on 01.10.2018 before S.B.

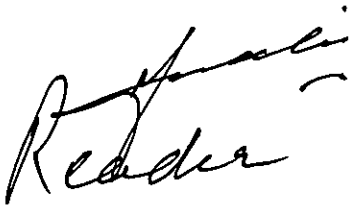

Chairman

01.10.2018

None present on behalf of the petitioner. Mr. Kabirullah Khattak, Additional AG for the respondents present. Notice be issued to petitioner and his counsel for attendance for 14.11.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

14-11-2018 Due to Retirement of Honorable Chairman the Tribunal is now functional therefore the case is adjourned to come up for the same on 2-1-2019


Reader

27.03.2018

Learned counsel for the appellant and Mr. Usman Ghani, learned District Attorney for the respondents present. Learned District Attorney seeks time for furnishing implementation reports. Adjourn. To come up for further proceedings on 11.04.2018 before S.B. Status quo be maintained till the date fixed before S.B.


MEMBER

11.04.2018

Petitioner with counsel, Addl: AG for respondents present. As directed vide order sheet dated 08.03.2018, learned counsel for the petitioner did not produce copy of relevant rules for properly ascertain required amendments in these rules etc. Adjourned. To come up for further proceedings on 03/07/18. before S.B.


(Ahmad Hassan)
Member

03.07.2018

Clerk to counsel for the petitioner and Mr. Muhammad Jan, DDA for respondents present. Clerk to counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 16.08.2018 before S.B..


(Ahmad Hassan)
Member

Execution Petition No. 224/2017
Farman Ali vs Govt

08.03.2018

Counsel for the petitioner and Addl. AG alongwith Abdul
Matin Computer Operator for the respondents present.

After perusing the file, it transpired that the petitioner seeks implementation of the judgment in which he was not appellant. He seeks implementation on the basis of para-7 of the judgment in which this Tribunal had directed the department to consider suitable amendments in the rules and where after appellants and other similarly placed employees may be considered for promotion.

The learned counsel for the petitioner argued that so far para-7 of the judgment dated 03.01.2017 of this Tribunal has not been implemented by the department. This Tribunal put a query to both the learned counsel for the petitioner and learned AAG regarding amendments in the rules and further proceedings before the august Supreme Court of Pakistan against that judgment. It was informed by the learned AAG that he would check the record from the concerned department regarding appeal before the august Supreme Court of Pakistan. However, the rules have not been amended so far as informed by the both the parties. The learned counsel for the petitioner requested that this execution petition may be fixed for 27.03.2018 at principal seat at Peshawar, where similar execution petitions have been fixed on the said date.

This Tribunal in order to reach a correct conclusion would first to determine whether the case of the present petitioner is at par with those who were appellants in the said judgment. For this purpose, the learned counsel for the petitioner is directed to produce the relevant rules in order to see what amendment is required and whether those rules are District-based, Divisional-based or Provincial-based. This would also to be seen that if the rules are amended whether same could be given retrospective effect and specially when there is a judgment of this Tribunal. To come up for arguments/further proceedings on 27.3.2018 alongwith similar execution petitions at principal seat. The application for interim relief shall be disposed of on the next date in the light of decision of prospectivity and retrospectivity. The restraint order shall continue till the date fixed.

Member

Chairman
Camp court, Swat

03.01.2018

Petitioner with counsel and Addl. AG for the respondents present. Mr. Majid Hussain etc. have filed an application for impleading them as petitioner in the present petition through Mr. Shamsul Hadi Advocate. Copies provided to the learned AAG. To come up for reply on this application and also implementation report as directed on the last date of hearing on 31.1.2018 before S.B at camp court, Swat. The restraint order shall continue till the date fixed.




(1) (1) 22
Chairman
Camp Court, Swat

31.01.2018

Counsel for the petitioner present and Addl. AG for respondents present. Counsel for the petitioner seeks adjournment. Granted. To come up for reply on this application and implementation report on 08.03.2018 before S.B at Camp Court Swat. The restraint order shall continue till the date fixed.

Chairman
Camp Court, Swat

Execution Petition No. 224/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	30.11.2017	<p>The Execution Petition of Mr. Farman Ali submitted to-day by Mr. Shamsul Hadi Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 30/11/17</p>
2-	18/12/17	<p>This Execution Petition be put up before Learning S. Bench at post on <u>19/12/17</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
19.12.2017		<p>Learned counsel for the petitioner present. Notice of the present execution petition be given to the respondent department. To come up for implementation report as well as reply of the present execution petition as well as reply of the application for interim relief for 03.01.2018. In the meanwhile the respondent department is directed to exercise restraint from issuing appointment orders in connection with advertisement dated 21.11.2017 for requirement of posts of Village Secretary and Junior Clerk in District Swat, till the next date.</p> <p style="text-align: center;"> (Muhammad Hamid Mughal) MEMBER</p>

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Execution Petition No. 224/2017

CM No: - _____/2017

In

Service Appeal No:- 1158/2015

Farman Ali

Versus

Govt: KPK & others

..... Petitioners

..... Respondents



INDEX

S#	Description of the Documents	Annex	Pages
1.	<i>Application for implementation</i>	*	1-3
2.	<i>Application for suspension</i>	*	4-5
3.	<i>Copies of Service Appeal & order/judgment dated 03/01/2017 of this Honourable Tribunal</i>	"A"	6-10
4.	<i>Copy of advertisement dated 21/11/2017</i>	"B"	11
5.	<i>Wakalat Nama</i>		12

Dated:- 30/11/2017

Applicant/Appellant

Through:-

Irfan Ali Yousafzai

&

Shamsul Hadi
Advocates High Court
Peshawar.

Swat

Respectfully Sheweth:-

1. *That the above titled Service Appeal was decided in favour of the applicant/appellant and others vide order/judgment dated 03/01/2017. (Copy of Service and order dated 03/01/2017 are attached)*

2. *That this Honourable Tribunal give direction to the respondents, which is reproduced as under:-*

“The right of the appellants and similarly placed employees, the respondents shall consider suitable amendments in the rules. Such an exercise shall be conducted and concluded within a period of 6 months from the date of receipt of this judgment and where-after appellants and other similarly placed employees may be considered for promotion in the mode and manners prescribed by the rules”.

3. *That the prescribed time period, which this Honourable Tribunal given to the respondents is being expired and they have not take any action of the judgment of this Honourable Tribunal and the respondents advertised new posts in Daily Mashriq dated 21/11/2017. (Copy of advertisement is attached).*

3

It is, therefore, most humbly prayed that on acceptance of this application, the respondents may kindly be direct to implement the order/judgment of this Honourable Tribunal dated 03/01/2017.

Dated:- 30/11/2017

Through:-

Applicant/Appellant

&

Irfan Ali Yousafzai



Shamsul Hadi
Advocates High Court
Peshawar.





4. That if the impugned advertisement mentioned above is not suspended, than the petitioners would suffer irreparable loss.

5. That the facts and grounds of the application for implementation may kindly be read as an integral part of this application.

It is, therefore, respectfully prayed that on acceptance of this application, the impugned advertisement dated 21/11/2017 may kindly be suspended, till the final decision of the case.

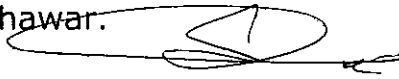
Dated:- 30/11/2017

Applicant/Appellant

Through:-

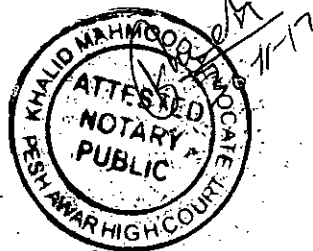
Irfan Ali Yousafza 

&

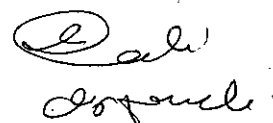
Shamsul Hadi
Advocates High Court
Peshawar. 

AFFIDAVIT:-

As per instruction of my client, It is, stated that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



DEPONENT



6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

K.P. Province
Service Tribunal
Diary No. 129
Date 13.10.20

APPEAL NO. 1158/2015

Mr. Shamsheer Ali, Naib Qasid (BPS-02),
O/O Assistant Director Local Government and Rural Development
Department Malakand, District Malakand.

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director General Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Assistant Director Local Government and Rural Development Department Malakand, District Malakand

RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL
ACT 1974 AGAINST THE INACTION OF THE
RESPONDENT No.4 BY NOT PROMOTING THE
APPELLANT TO THE POST OF VILLAGE/
NEIGHBORHOOD COUNCIL SECRETARY (BPS-07) AND
AGAINST THE SERVICE RULES OF THE RESPONDENT
DEPARTMENT NOTIFIED ON 26.1.1978 AND AGAINST
NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL
OF APPELLANT WITHIN THE STATUTORY PERIOD OF
NINETY DAYS**

Filed to the
Registrar
13/10/15

3.1.2017

Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Khursheed, Computer Operator for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today in connected service appeal No. 1157/2015, titled "Zahiq Hussain Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others", we dispose off the present appeal also as per detailed judgment. Parties are left to bear their own cost. File be consigned to the record room.

Self-Noted *Self-Chairman*

Certified to be true copy

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

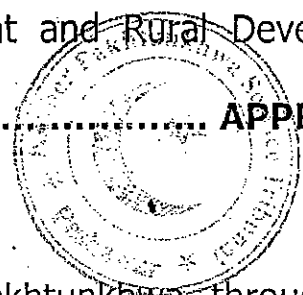
(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1157/2015

A.W.F. Province
Service Tribunal
Diary No. 1246
Dated 13/10/2015

Mr. Zahiq Hussain, Naib Qasid (BPS-02),
O/O Assistant Director Local Government and Rural Development
Department Malakand, District Malakand.



APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director General Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Assistant Director Local Government and Rural Development Department Malakand, District Malakand

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE INACTION OF THE RESPONDENT No.4 BY NOT PROMOTIING THE APPELLANT TO THE POST OF VILLAGE/ NEIGHBORHOOD COUNCIL SECRETARY (BPS-07) AND AGAINST THE SERVICE RULES OF THE RESPONDENT DEPARTMENT NOTIFIED ON 26.1.1978 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Filed to-day
Registrar
13/10/15

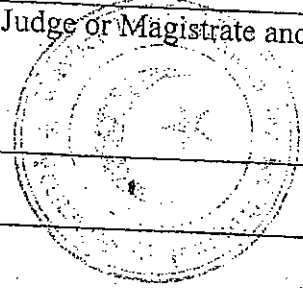
PRAYER: That on acceptance of this appeal this appeal the impugned service Rules dated 26.1.1978 of the respondent Department may kindly be modify to the extent that promotion quota may very kindly be allocated for class-iv to the post of Secretary village Council and the respondent No.5 may further kindly be directed to consider the appellant for promotion to the post of Village/ neighborhood Council Secretary (BPS-07) in light of the order dated 31.5.20008. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

S. No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

1. Service appeal No. 1157/2015, Zahiqa Hussain,
 2. Service appeal No. 1158/2015, Shamsheer Ali,
 3. Service appeal No. 1159/2015, Muhammad Sajid,
 4. Service appeal No. 1160/2015, Shahab Hussain, &
 5. Service appeal No. 1161/2015, Zahid Akram
- Vs. the Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar and 4 others.

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:

03.01.2017

Counsel for the appellants and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Khursheed, Computer Operator for respondents present.

2. This judgment shall dispose of the instant service appeal No. 1157/2015, titled "Zahiqa Hussain Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others" as well as service appeals No. 1158/2015, titled "Shamsheer Ali Versus the Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and 4 others", No. 1159/2015, titled "Muhammad Sajid Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others", No. 1160/2015 titled "Shahab Hussain Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others" and No. 1161/2015, titled "Zahid Akram Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others" as identical questions of facts and law are involved therein.

ATTESTED

 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
 CAMP COURT SWAT

3. Brief facts of the case of the appellants are that they are serving as Class-IV employees in the establishment of Local Government & Rural Development Department District Malakand. In the rules in vogue till 2002 the appellants and similarly other employee were entitled to promotion as Junior Clerks subject to fulfilling the pre-requisites which provision of promotion was done away with in the year 2002 leaving no prospects for career/promotion of the appellants and similarly other placed employees.

4. We have heard arguments of learned counsel for the parties and perused the record.

5. Though appellants are seeking promotion to the post of Secretary Village Council and neighborhood Council Secretary however no such provision for promotion is available in the rules and therefore this court is in a position to entertain the appeals of the appellants.

6. It is an established principle of law that every person in the service of Pakistan has a right to career/progression/promotion including the appellants keeping in view the provisions of fundamental rights read with the judgments of the august Supreme Court of Pakistan including the case laws reported as 1991-SCMR-1041, 2010 PLC (C.S)68, 2010 PLC (C.S) 1075, 2011-PLC (C.S) 1130.

7. We therefore direct that keeping in view the said rights of the appellants and similarly placed employees the respondents shall consider suitable amendments in the rules. Such an exercise shall be conducted and concluded within a period of 6 months from the date of receipt of this judgment and where-after appellants and other similarly placed employees may be considered for promotion in the mode and manners prescribed by rules. The appeals are disposed of in the above terms. Parties are left to

ATTESTED
[Signature]
[Stamp]

bear their own costs. File be consigned to the record room.

Announced *Ed. M. Azim Khan Afridi,*
03-01-2017
Chairman
Conf Court Swat

Ed. Shurad Hussain,
Member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation: *10-01-2017*
Number of Writs: *1603*
Copying Fee: *10-0*
Urgent: *2-0*
Total: *12-0*
Name of Case: *K.M.D.*
Date of Decision: *10-01-2017*
Date of Rejection: *10-01-2017*

Village Secretary - Dist - Govt

Advocate 21/11/2017

N/B Kethana - Swat

Faruq Ali

1
D.S.

M
2/18

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA.

C.m No. _____/2017

In

Execution Petition No.224/2017.

Farman Ali.....Petitioner.

VS

Secretary Local Govt KPK and others.....Respondents.

Application for impleadment, to array the applicant namely

1. Majid Hussain.

2. Fahim Zada.

3. Nasar Khan.

4. Amjad Ali.

5. Zeshaan Khan

**Presently all working against the posts of "Naib Qasid" at
Local Govt & Rural Development Department at Mingora,
Swat. as petitioners in the titled petition.**


Respectfully Sheweth:

1. That the captioned execution petition is pending for adjudication before of this august court with date fixed as 03/01/2017.
2. That the applicants have also the same grievances against the respondents and want the same relief from this august court like other petitioners of the title petition.

It is, therefore, humbly prayed that on acceptance of this application, the above named applicant may kindly be arrayed as petitioners/applicants in the titled petition.

Through

Applicants


Shams ul Hadi
Advocate

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA.

C.m No. _____/2017.

In

Execution Petition No.224/2017.

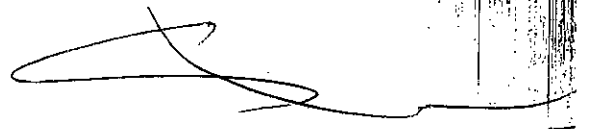
Farman Ali.....Petitioner.

VS

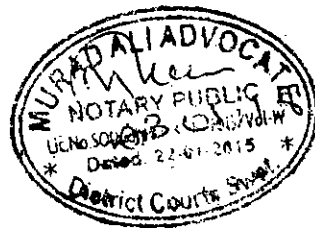
Secretary Local Govt KPK and others.....Respondents.

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **impleadment application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



ADVOCATE



333
N. 0301118

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA.

C.m No. _____/2017

In
Execution Petition No.224/2017.

Farman Ali.....Petitioner.

VS

Secretary Local Govt KPK and others.....Respondents.

ADDRESSES OF THE PARTIES

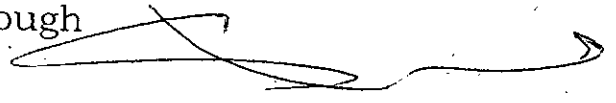
Applicants:

1. Majid Hussain.
2. Fahim Zada.
3. Nasar Khan.
4. Amjad Ali.
5. Zeshaan Khan

Presently all working against the posts of "Naib Qasid" at
Local Govt & Rural Development Department at Mingora, Swat

Applicants

Through



Dated: 03/01/2017

Shams-ul-Hadi

Advocate.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition No.224/2017

Farman Ali Son of Mian Gul Ambar Naib Qasid BPS-02 Local Government & Rural Development Department District Swat and others.....Petitioner

Versus

Government of Khyber Pakhtunkhwa Peshawar through Chief Secretary Khyber Pakhtunkhwa Peshawar and others..... Respondents

Written reply to the execution petition No. 224/2017 on behalf of respondents No.1 to 5

Respectfully Shewith:-

Preliminary objections

- a) That Petitioners has got no cause of action
- b) That instant petition is barred by time
- c) That the present petitioners have neither approached the Honourable Service Tribunal nor the Service Tribunal has passed any decision in favor of the petitioners.
- d) That the petitioners has got no locus standi

Facts,

1. Incorrect. Neither the present petitioners have submitted appeal before the Honourable Service Tribunal nor the Honourable Service Tribunal has passed any judgment in favor of the present petitioners. Hence the petitioners are misleading/ misrepresenting the court in the instant case.
2. Incorrect. The honourable Service Tribunal has passed Judgment in Service appeals namely.
 1. Service appeal No.1157/2015, ZahiQ Hussain
 2. Service appeal No.1158/2015, Shamsher Ali
 3. Service appeal No.1159/2015, Muhammad Sajid
 4. Service appeal No.1160/2015, Shahab Hussain &
 5. Service appeal No.1161/2015, Zahid Akram

VS

The Govt: of Khyber Pakhtunkhwa through Chief Secretary Peshawar and 4 others wherein the present petitioners have not impleaded there self as necessary party to the above appeals therefore the Honourable Service Tribunal has not passed any Judgment in favor of the present Petitioners and the petitioners are trying to mislead the Honourable Service Tribunal accordingly.

3. Incorrect. The Honourable Service Tribunal has not given the prescribed time period in this regard. The advertisement for newly posts of Secretaries of VC/NCs in District Swat has been published in the leading News Papers but no appointments against these vacant/advertised Posts have been made as yet because these posts will be filled through ETEA result for which date 04.03.2018 was fixed for screening. There exist no such Service rules in LG&RDD Khyber Pakhtunkhwa under which a Naib Qasid could be promoted to the post of Secretary Village Neighbourhood Council.

The present Petitioners have wasted the precious time of the Honorable Service Tribunal Khyber Pakhtunkhwa by filing the instant execution petition.

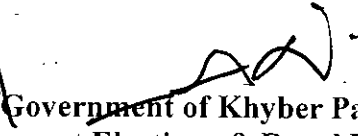
Prayer

Keeping in view the above facts and circumstances, it is humbly prayed that the instant execution petition of the petitioners may kindly be dismissed with cost, please.


Respondent No.1


Chief Secretary
Khyber Pakhtunkhwa Peshawar

Respondent No.2


Secretary to Government of Khyber Pakhtunkhwa
Local Government Elections & Rural Development
Department Peshawar


Respondent No.3


Secretary to Government of Establishment
Department Khyber Pakhtunkhwa, Peshawar

Respondent No.4


Director General LG&RDD Khyber Pakhtunkhwa
Peshawar

Respondent No.5


Assistant Director (Seniour) LG&RDD, Swat

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition No.224/2017

Farman Ali Son of Mian Gul Ambar Naib Qasid|BPS-02 Local Government & Rural Development
Department District Swat and others.....Petitioner

Versus

Government of Khyber Pakhtunkhwa Peshawar through Chief Secretary Khyber Pakhtunkhwa
Peshawar and others..... Respondents

Written reply to the execution petition No. 224/2017 on behalf of respondents No.1 to 5

Respectfully Shewith:-

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 4. Service appeal No.1160/2015, Shahab Hussain &
 5. Service appeal No.1161/2015, Zahid Akram

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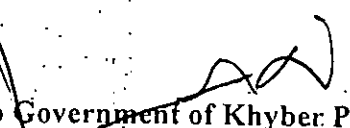
Prayer

Keeping in view the above facts and circumstances, it is humbly prayed that the instant execution petition of the petitioners may kindly be dismissed with cost, please.

Respondent No.1


Chief Secretary
Khyber Pakhtunkhwa Peshawar

Respondent No.2


Secretary to Government of Khyber Pakhtunkhwa
Local Government Elections & Rural Development
Department Peshawar


Respondent No.3


Secretary to Government of Establishment
Department Khyber Pakhtunkhwa, Peshawar

Respondent No.4


Director General LG&RDD Khyber Pakhtunkhwa
Peshawar

Respondent No.5


Assistant Director (Seniour) LG&RDD, Swat