

Form- A

FORM OF ORDER SHEET

Court of

Implementation Petition No. 990/2023

S.No.

Date of order proceedings

Order or other proceedings with signature of judge

1

2

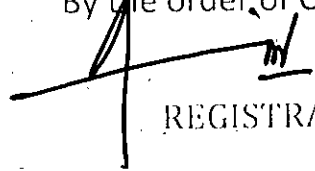
3

1

22.12.2023

The implementation petition of Mst. Sima Gul received today by registered post through Mr. Khaled Mehmood Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan on _____ . Original file be requisitioned. AAG has noted the next date.

By the order of Chairman



REGISTRAR

The execution petition in appeal no.1630/2023 received today i.e. on 30.11.2023 by registered post is returned to the counsel for the petitioner with the following remarks.

- 1- Copy of application moved by the petitioner to competent authority for the implementation of judgment is not attached with the petition. If the application has already been preferred and reasonable period of 30 days has been expired be placed on file. If not, the same process be completed and then after approach to this Tribunal for the implementation of Judgment.
- 2- Affidavit is not attested by the Oath Commissioner.

No. 3748 /S.T,
Dt. 1/12 /2023.



REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Mr. Khaled Mahmood Adv.
High Court, D.I. Khan.

① copy of application vide Diary no 3998
Dated 3/11/2023 attached as Annex B (page 9A)

② Affidavit attested by Oath Commissioner

after removing the observation,
returned.

W.S.
15/12/2023

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation Petition No. 990 /2023

In line and with reference to


Service Appeal No.1630/2023

Mst. Sima Gul VS. Government of Khyber Pakhtunkhwa etc

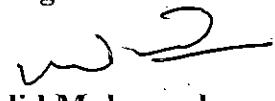
INDEX

| <i>S No.</i> | <i>Description of Documents</i> | <i>Annexure</i> | <i>Page Number</i> |
|--------------|--|-----------------|--------------------|
| 1. | Copy of Implementation Petition alongwith affidavit. | --- | 1 — 2 |
| 2. | Copy of Appeal with Judgement dated 25-09-2023 + Application | A, B | 3 — 9A |
| 3. | Vakalatnama | | 16 |

Yours Humble Petitioner


Mst Sima Gul)
Through Counsel

Dated: 25/11/2023


Khalid Mahmood
Advocate High Court
Stationed at D.I.Khan

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation Petition No. 990 /2023

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 9616

Dated 30-11-2023

In line and with reference to

Service Appeal No.1630/2023

Mst. Sima Gul, Principal (BPS-16) GGHS Miran Shah

District North Waziristan Tribal District.

Petitioner

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. **Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (F)** North Waziristan, Education.

Respondents

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGEMENT DATED 25-09-2023 IN THE ABOVE TITLED APPEAL IN LETTER AND SPIRIT.

Respectfully Sheweth,

1. That above mentioned appeal has been decided by this august service tribunal vides judgment dated 25-09-2023 in favor of petitioner.
2. That the petitioner filed the appeal and thereby it is allowed in favor of petitioner vide judgment dated 25-09-2023 with the direction reproduced as under:

“in view of the above discussion we are constrained to allow the instant appeal as prayed for and also set a side the order of DEO (F) North Waziristan dated: 02-08-2023 being divide of illegal authority” copy of appeal with judgment dated 25-09-2023 is annexed as Annexure-A.

3. That the petitioner repeatedly knocked the door of respondents for implementation of the afore mentioned judgment but they are not paying heed to it nor implementing the same. - *Ames B'*

It is therefore, humbly prayed that respondents may please be directed to make fully and effusively compliance of the Judgment dated 25-09-2023 of this Honourable Tribunal in true essence & spirit without any further delay.

Yours humble Petitioner
Through Counsel

Dated: 25/11/2023



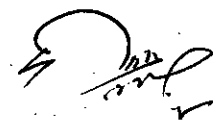
Khalid Mahmood
Advocate High court.
Stationed at D.I.Khan

AFFIDAVIT

I, **Mst. Sima Gul**, Principal (BPS-19) GGHS Miran Shah District North Waiziristan Tribal District, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this **Petition** are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above petition is false and nothing material has been deliberately concealed.



Identified by Counsel:
Khalid Mahmood AHC



Deponent



1210188163422

Appeal

Serial A



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

SERVICE APPEAL NO. 1630/2023

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 6942
Dated 09/08/23

Mst. Sima Gul, Principal (BPS-19),
GGHS Miran Shah, District North Waziristan under transfer to
GGHSS Kotka Bilwar Khan, District Bannu.

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (F), North Waziristan.
- 4- The District Education Officer (F), Bannu.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 21.06.2023 COMMUNICATED ON 12.07.2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM NORTH WAZIRISTAN TO BANNU IN UTTER VIOLATION OF TRANSFER/ POSTING POLICY AND AGAINST THE APPELLATE ORDER DATED 08.08.2023 WHEREBY THE DEPARTMENTAL APPEAL HAS BEEN REJECTED/ FILED ON NO GOOD GROUNDS.

Filed on
9/8/23

PRAYER:

That on acceptance of this appeal the impugned transfer order dated 21.06.2023 to the extent of appellant at serial No. 2 and appellate order dated 08.08.2023 may very kindly be set aside and the appellant be retained at GGHS Miran Shah North Waziristan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

ATTESTED

Brief facts giving rise to the present appeal are as under:-

[Signature]
NAMINE
Khyber Pakhtunkhwa
Service Tribunal

That appellant is the employee of the respondents department and performing her duty as Principal (BPS-19) with zeal and zest and up to the entire satisfaction of her superiors.

- 2- That while performing her duty as Principal in GGHS Miran Shah North Waziristan, the appellant was transferred to GGHSS Kotka Bilwar Khan Bannu vide impugned notification dated 21.06.2023. Copy of the notification is attached as annexure.....**A.**
- 3- That it is pertinent to mention here that the impugned notification was communicated to the appellant through her what's app by the DEO North Waziristan on 12.07.2023. Copy of what's app cutting is attached as annexure **B.**
- 4- That it is worth mentioning that vide notification dated 02.07.2023 one Miss Memona Akhtar SST (BPS-16) was assigned the responsibilities of the principal of the ibid school as additional charge. Copy of notification dated 02.07.2023 is attached as annexure**C.**
- 5- That appellant feeling aggrieved from the impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 preferred departmental appeal on 12.07.2023 before the appellate authority which has been rejected vide appellate order dated 08.08.2023 on no good grounds. Copies of the departmental appeal and appellate order are attached as annexure**D & E.**
- 6- That appellant having no other efficacious remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

- A- That impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 and appellate order dated 08.08.2023 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated in accordance with law and rules by the respondent department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 is violative of Clause-I of transfer/posting policy of Provincial Government as the same is not in the best interest of public service. Copy of Transfer posting policy is attached as Annexure.....**F**
- D- That according to the transfer and posting policy of the respondent's right person for the right job shall be posted, hence the impugned transfer notification and the subsequent notification dated 02.07.2023 whereby a junior officer of BPS-16 has been assigned with additional responsibility as Principal of the school.

ATTESTED
 EX AMINER
 Khyber Pakhtunkhwa
 Service Tribunal

- E- That the impugned transfer notification dated 21.06.2023

respondents in arbitrary and mala fide manner, therefore, the same is not tenable in the eye of law and liable to be struck down.

F- That the impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 and appellate order are not passed in the public interest which is clear violation of judgments passed by this Honourable tribunal and Peshawar High Court, Peshawar. Copies of the judgments are attached as annexureG.

G- That it is worth mentioning that the Election Commission of Pakistan vide notification dated 22.01.2023 banned all kinds of transfers/postings in the provinces of Khyber Pakhtunkhwa and Punjab. Copy of the Notification dated 22.01.2023 is attached as annexure H.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal may kindly be accepted as prayed for.

Dated: 09.08.2023

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK,
ADVOCATE SUPREME COURT

KAMRAN KHAN
UMAR FAROOQ MOHMAND

&

MEHMOOD JAN
ADVOCATES

AFFIDAVIT

I, Mst. Sima Gul, Principal (BPS-19), GGHS Miran Shah, District North Waziristan under transfer to GGHS Kotka Bilwar Khan, Bannu do hereby solemnly affirm that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Certified to be true copy



MEHMOOD JAN
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



Service Appeal No. 1630/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mst. Sima Gul, Principal (BPS-19), GGHS Miran Shah, District North Waziristan under transfer to GGHS Kotka Bilwar Khan, District Bannu.(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The District Education Officer (F) North Waziristan.
4. The District Education Officer (F) Bannu.....(Respondents)

Present:-

NOOR MUHAMMAD KHATTAK,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....09.08.2023

Date of Hearing.....25.09.2023

Date of Decision..... 25.09.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;


"That on acceptance of this appeal the impugned transfer order dated 21.06.2023 to the extent of appellant at serial No.

2 and appellate order dated 08.08.2023 may very kindly be set

aside and the appellant be retained at GGHS Miran Shah

North Waziristan. Any other remedy which this august

ATTESTED


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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Tribunal deems fit that may also be awarded in favor of the appellant."

02. Brief facts of the case are that appellant is performing her duty as Principal GGHS Miran Shah North Waziristan. She was transferred from the said school to GGHSS Kotka Khan Bilwar Khan Bannu vide impugned Notification dated 21.06.2023 which was communicated to the appellant on 12.07.2023. Feeling aggrieved from the impugned transfer Notification dated 21.06.2023 the appellant filed departmental appeal on 12.07.2023 which was rejected vide appellate order dated 08.08.2023, hence preferred the instant service appeal on 09.08.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in her appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned transfer Notification dated 21.06.2023 communicated to the appellant on 12.07.2023 and appellate order dated 08.08.2023 are against the law, facts, norms of natural justice and material on record, hence liable to be set aside; that the impugned transfer Notification is violative of Clause-I of transfer/posting policy of the Provincial Government; that according to the transfer and posting policy right person for the right job shall be posted, hence the impugned transfer Notification and the subsequent Notification dated 02.08.2023 whereby a junior officer of BPS-16 has been assigned with additional responsibilities of Principal of the School. It was further contended that the Election Commission of Pakistan vide Notification dated 22.01.2023 banned all kinds of transfer/postings in the provinces of Khyber Pakhtunkhwa and Punjab; that the appellant has not been

treated in accordance with law, rules and also violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the impugned transfer Notification dated 21.06.2023 has been issued by the respondents in arbitrary and malafide manner, therefore, the same is not tenable in the eye of law and liable to be struck down.

05. Learned District Attorney on the other hand contended that the appellant has completed her normal tenure of posting in GGHS Miran Shah North Waziristan and after approval from the Election Commission of Pakistan, the appellant was transferred and posted at GGHSS Kotka Bilwar Khan, Bannu; that the competent authority has given look after charge to Miss Memona Akhtar, SST for smooth running of School Administration till further arrangements. It was further contended that impugned transfer Notification dated 21.06.2023 is in accordance with law and there is no violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the transfer Notification dated 21.06.2023 is legal and no violation of Clause-I of transfer/posting policy of the Provincial Government has been made; that there is nothing un-just or malafide on the part of respondents, therefore, the appeal in hand is liable to be dismissed.

06. It is admitted fact that the post of Principal GGHS Miran Shah, North Waziristan is a BPS-19 post and the appellant being BPS-19 officer was holding the said post. It is also not disputed that the appellant's tenure at the school had matured. However, the respondents department has not been able to find proper substitute to post as Principal GGHS Miran Shah. The District Education Officer (Female) has issued order dated 02.08.2023 whereby one Miss Memona Akhtar SST (BPS-16) has been declared as Incharge of the said school. Giving the charge of BS-19 post to a junior teacher in BS-16 is not justifiable and beyond

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Hyderabad
Service Tribunal
Bannu

SCANNED

competency of the DEO (Female) North Waziristan. Representative of the respondents stated at the bar that this arrangement is still in place in GGHS Miran Shah which is not only unjust and unfair but illegal as well. What prompted the respondents to transfer the appellant and go for this unjust adhoc arrangement is not coming on record. The posting/transfer policy of the Government clearly sets out in Clause-I of the Policy that posting/transfer of Government Servants shall be made strictly in the public interest. What public interest or exigency was involved in the transfer of the appellant without proper substitute in her place is not known. The impugned order dated 21.06.2023 and the comments submitted by the respondents are silent in the matter. Another guiding principle contained in Clause XIII of the Policy *ibid* expressly enunciate that while making posting/transfer of civil servants the authorities concerned shall keep in mind and ensure posting of proper person on proper post, which, in the instant case, has been ignored.

07. In view of the above discussion we are constrained to allow the instant appeal as prayed for and also set aside the order of DEO (Female) North Waziristan dated 02.08.2023 being devoid of legal authority. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of September, 2023.*

(Rashida Bano)
Member (J)

(Muhammad Akbar Khan)
Member (E)

SCANNED

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

✓

Date of Presentation of Application 22/11/23
Number of Words 78
Copying Fee 35/-
Urgent 5/-
Total 40/-
Name of Copyist _____
Date of Completion 22/11/23
Date of Delivery 22/11/23

TO

worthy Secretary (E&SE)

Annex (B)

(9A)

Subject: Implementation of Court Order in
Service Appeal No: 1630/2023

Respected Sir,

Most humbly it is stated that I Mst. Sima Gul Principal (BPS-19) GGHS Miran Shah, District North Waziristan was transfer to GGHS Kotka Bilawar Khan, District Bannu vide Notification dated 21/06/2023. An Appeal was filed in the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar which was accepted vide judgement dated 25/09/2023.

It is therefore requested to kindly implement the judgement and withdraw the impugned Notification dated: 21/6/2023 plz. (Copy & judgement is attached)

Yours Sincerely
Mst. Sima Gul
Principal (BPS-19)

Dated: 03/11/2023.

3998
21/11/2023

ATTESTED
SHAHID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

