


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 69/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1	15.01.2024	<p>The implementation petition of Mst. Shabana Naž submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____ Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 69 /2024

In

Service Appeal No. 1707/2019

Shabana Naz, Senior Arabic Teacher, BPS-16, Government Girls High School
Mahoo Dheri, Mardan.

.....PETITIONER

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,
Peshawar and others.

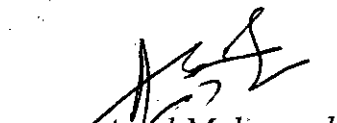
.....RESPONDENTS

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Petitioner

Through


Asad Mahmood
Advocate High Court

BEFORE KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 69 /2024

In

Service Appeal No. 1707/2019

Khyber Pakhtunkhwa
Service Tribunal

Registry No. 10861

Dated 15-1-2024

Shabana Naz, Senior Arabic Teacher, BPS-16, Government Girls High School
Mahoo Dheri, Mardan.

.....**PETITIONER**

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. District Education Officer (Female), Mardan
3. The Incharge Headmistress, Government Girls High School Mahoo Dheri, Mardan.
4. District Nazim, Mardan
5. Director Elementary & Secondary Education KP, Peshawar.

.....**RESPONDENTS**

**EXECUTION PETITION FOR IMPLEMENTATION OF
THE ORDER DATED 14th SEPTEMBER, 2022 IN
SERVICE APPEAL NO. 1707/2019**

Respectfully Sheweth,

1. On 13th February, 2019, the petitioner for being seriously ill and was unable to put herself in attendance in the school, applied for one day casual leave but the application for casual leave submitted by the petitioner was turned down by the Incharge Headmistress GGHS Mahoo Dheri, Mardan without any plausible reason and returned unapproved.
2. Instead of taking the petitioners' application against the behavior of Headmistress into consideration, DEO (F) Mardan transferred the petitioner from GGHS Mahoo Dheri, Mardan to GGHS Ghala Dher Mardan as a punishment and imposed a minor penalty of withholding of one increment for two years upon the petitioner through impugned order dated 6th of April, 2019 which was challenged before the appellate authority through departmental appeal.

3. The impugned transfer order dated 6th of April, 2019 was assailed before this hon'ble Tribunal and the Tribunal was pleased to allow the service appeal through order of this Tribunal dated 14th September, 2022 and the impugned transfer dated 6th of April, 2019 has been set aside with direction to respondents to restore the increment that was stopped.

(Copy of Judgement as Annexure-A)

4. The order of Tribunal has been obeyed to the extent of retention of petitioner/appellant on her present post at GGHS Mahoo Dheri, Mardan BUT THE RESTORATION OF INCREMENT HAS BEEN MADE ONLY IN PAPERS THROUGH ORDER DATED 29TH NOVEMBER, 2023 AND NO INCREMENT WITH SALARIES HAS BEEN PAID SINCE MAY 2019 TILL NOVEMBER, 2023.

(Copy of Office Order as Annexure-B)

5. The office order dated 29th November 2023 is an eye wash just to deceive the law and order of this hon'ble court because when the main transfer order dated 6th of April, 2019 has been declared illegal and unlawful, then withholding the salaries for disobeying the illegal transfer order which has already been set aside is ^{also} neither legal nor logical but a defiance to implement the order of this hon'ble Tribunal.

6. The petitioner made repeated requests even through an application to implement the order of the Hon'ble Tribunal and redress her grievances in terms of payment of all the arrears including salaries with increment since May, 2019 till November 2023, but the respondents are adamant to obey the Order dated 14th September, 2022 passed by this Tribunal in its letter and spirit.

Application as Annex-C

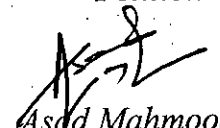
7. **Now**, the respondents flatly refused to obey the order of this Hon'ble Tribunal to release the unpaid salaries of the petitioner of the intervening period to redress her grievances, the petitioner has no other option but to seek legal rescue from this Hon'ble Tribunal.

8. The respondents were made fully aware of consequences in defiance of the order, yet they openly flouted and are reluctant to implement the order dated 14th September, 2022 in its letter and spirit, hence the instant execution petition.

To safeguard the paramount interest of the petitioner, this Hon'ble Tribunal is most humbly prayed that the respondents may kindly be directed to implement its order duly passed on 14th September, 2022 in toto and grievances of the petitioner in terms of payment of all the arrears including salaries with increment for the intervening period i.e. since May 2019 till November 2022, may kindly be redressed because there is no concept of increments in isolation without payment of salaries for the intervening period and order of this Tribunal may kindly be implemented in its true letter and spirit.


Petitioner

Through


Asad Mahmood
Advocate High Court

AFFIDAVIT

It is hereby solemnly affirm and stated on oath that contents of this petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent

ATTESTED



21-11-2023

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1707/2019

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)
MISS. FAREEHA PAUL ... MEMBER(E)



Mst. Shabana Naz, Senior Arabic Teacher (S.A.T) BPS-16, Government Girls High School Mahoo Deheri, Mardan.

.... (Appellant)

Versus

1. District Education Officer (Female) Mardan.
2. The Incharge Headmistress, Government Girls High School Mahoo Dheri, Mardan.
3. District Nazim Mardan.
4. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
5. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.

... (Respondents)

Mr. Rahat Ali Khan Nahqai
Advocate

For appellant

Mr. Kabir Ullah Khattak
Additional Advocate General

For respondents

Date of Institution.....04.12.2019
Date of Hearing.....14.09.2022
Date of Decision.....14.09.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 06.04.2019 issued by the District Education Officer (Female) whereby minor penalty of withholding of one increment for two

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

years was imposed upon the appellant and she was transferred to Government Girls High School Ghala Dher on administrative grounds.

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Senior Arabic Teacher (SAT) in the year 2007. On 13.02.2019 she became seriously ill and applied for one day casual leave which was not recommended by the incharge Headmistress GGHS Mahoo Dheri, Mardan (Respondent No. 1). On the next date i.e 14.02.2019, the appellant sent another proforma for one day casual leave to the office of Respondent No. 1 (DEO (Female) Mardan) which was returned unapproved. Against the behaviour of the Headmistress, appellant filed an application before the DEO (F) Mardan which was not considered. On 21.03.2019, she was directed to attend the office of DEO (F) Mardan on 28.03.2019 for personal hearing but without hearing, punishment was imposed on her. The DEO (F) without paying any heed to the ban imposed on transfer by the Secretary Elementary & Secondary Education as well as the District Nazim, transferred the appellant from Mahoo Dheri to Ghala Dher vide the impugned order dated 06.04.2019. The appellant preferred an appeal before the Director Elementary and Secondary Education Khyber Pakhtunkhwa on 28.06.2019 which was not responded; hence this service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the case in detail and argued that she was charged on the ground of misconduct whereas casual leave did not come under the ambit of misconduct. He contended that the punishment imposed on the appellant was a double jeopardy, not only her increment was stopped for two years

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ATTESTED

[Handwritten signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

but she was transferred as a punishment from GGHS Mahoo Dheri to GGHS Ghala Dher, which was against the Constitution and law and also against the transfer policy. He further contended that no proper procedure under the E&D Rules was adopted before imposing penalty on her, i.e neither any inquiry was conducted nor she was given any show cause notice.

5. The learned Additional Advocate General at the very onset contended that the appeal was not maintainable because the appellant was found absent by the Inspection Team on which the Headmistress called an explanation and requested the DEO (F) to take disciplinary action against her. On the question of transfer, the learned Additional Advocate General argued that the competent authority under Civil Servant Act was fully empowered to transfer her on administrative ground and such order was not in violation of the transfer policy.

6. In view of the arguments presented and the record available before us, it is clear that the appellant was serving at GGHS Mahoo Dheri and that she applied for leave on grounds of sickness on 13.02.2019 but leave request was not granted by the Headmistress of the school. Unfortunately a copy of that application is not available with the record produced before us. However, another leave application on a specified proforma for 14.02.2019 is available with the record, which was also regretted. It has been contended by the learned Additional Advocate General that the appellant was proceeded against based on a report of the inspection team dated 14.02.2019. Copy of report is annexed with the reply of respondents which indicates that report has been signed by the Principal GGHS Hoti No. 2, Mardan. Date on that report is 14.02.2018 which seems to be written by mistake and the year is read as 2019. Record available before us further contains a letter addressed to DEO (F) Mardan and signed by two Principals and one Headmistress i.e Principal GGHS No. 1 Mardan, Principal GGHS Hoti No.2 Mardan and Headmistress GGHS Mahoo Dheri Mardan. They have raised certain issues against the appellant in their

ATTESTED

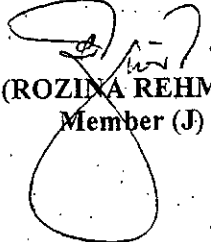
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

letter with a recommendation to transfer her at some far off place and take disciplinary action against her.

7. The above mentioned letter contains some allegations against the appellant. It is felt that had it not been appropriate for the competent authority to inquire into those allegations before taking any action and imposing punishment on the appellant? We feel that the competent authority should have ordered an inquiry first or given her a show cause notice for her response. He should have given her a fair opportunity to present and defend her case. Record is silent on these lines.

8. In view of the above, the appeal in hand is allowed and the impugned order dated 06.04.2019 is set aside, with the direction to respondents to restore the increment that was stopped and retain the appellant on her present post at GGHS Mahoo Dheri. Parties are left to bear their own costs. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of September, 2022.


(ROZINA REHMAN)
Member (J)


(FAREEHA PAUL)
Member (E)

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

Date of Presentation of Application 04/9/23
Number of Words page 4
Copying Fee 20/-
Urgent
Total 20/-
Name of Copyist
Date of Completion 07/9/23
Date of Delivery of Copy 07/9/23

OFFICE OF THE DISTRICT EDUCATION OFFICER

(FEMALE) MARDAN

PHONE/FAX NO.09379230150

Email Address:-EMISMARDAN_DEOFEMALE@YAHOO.COM

Annex - B

8

OFFICE OF THE DISTRICT EDUCATION OFFICER

(FEMALE) MARDAN

PHONE/FAX NO.09379230150

Email Address:-EMISMARDAN_DEOFEMALE@YAHOO.COM

OFFICE ORDER.

Consequent upon the Khyber Pakhtunkhwa Service Tribunal Peshawar judgment dated 14-09-2022 service appeal No.1707-2019 In the view of the above order Mst, Shabana Naz Senior AT BPS-16 is hereby restored her 01 annual increment. And adjusted at her present station ie, GGHS Maho Dheri Mardan with immediate effect.

(ABIDA PARVEEN)
DISTRICT EDUCATION OFFICER
(FEMALE) MARDAN.

Endst No 8037-38 Transfer file Dated 29/11/2022

Copy Forwarded to the:

1. District Account Officer Mardan.
2. Principal/HM Concerned.
3. Official Concerned.

DISTRICT EDUCATION OFFICER
(FEMALE) MARDAN

29/11/22

ATTST

To,

The Director,
Elementary and Secondary Education,
Peshawar.

**APPLICATION FOR RELEASING SALARIES WITH-HELD SINCE 6TH APRIL, 2019
TILL ADJUSTMENT ON PREVIOUS POST AND RESTORATION OF INCREMENT
VIDE ORDER DATED 29TH NOVEMBER, 2022.**

Respected Sir,

It is submitted as under:

1. I have been rendering services as Senior Arabic Teacher (SAT) since 2007 in the education department at different schools. While posted at Government Girls High School (GGHS) Mahoo Dheri, Mardan; I become seriously ill and applied for one day casual leave on account of medical grounds.
2. The incharge Headmistress GGHS Mahoo Dheri, Mardan returned the application for medical leave unapproved and rejected in contravention to Rule 8 of Civil Servants Leave Rules, 1981.
3. Second application for one day medical leave on the next day was also returned unapproved which speaks loudly of some personal grudges known to incharge Headmistress GGHS Mahoo Dheri.
4. DEO(Female), Mardan instead of paying heed to my grievances, directed me to attend her office for personal hearing. However, without hearing me, the punishment of transfer and withholding of one increment for two years was imposed upon me. However, transferring a civil servant as a punishment is illegal and violation of Rule-4 of E & D Rules, 2011.
5. The legality of the order passed by DEO(Female), Mardan was assailed before the KP Service Tribunal; the order of DEO(F) Mardan was held illegal and thus set aside through judgement dated 14th September, 2022 in the service appeal no. 1707/2019.
6. Where the salaries of the appellant were with-held/stopped on the basis of the transfer order 6th April, 2019 which has been held illegal by KP Service Tribunal in service appeal no. 1707/2019. NOW, refusing the salaries for the intervening period from the date of passing of the ibid order till the order of adjustment at GGHS Maho Dheri and restoration of increment dated 29th November, 2022 passed in compliance of KP Service Tribunal, Peshawar, is an unlawful and illegal act on the part of department. Reliance is placed on:

DD-2 (F)

23/11/22



ATTS

2015 SCMR 77

General Rule: Civil servant is entitled for back benefits when order held illegal.

Exception to General Rule: Civil servant is not entitled to back benefits subject to proof that he/she remained in gainful job during the intervening period.

2007 SCMR 55(b)

Civil Servant is entitled for all back and consequential benefits where the fault lies upon the department which kept the civil servant away from employment.

2002 SCMR 1034 & 2003 SCMR 1108:

Civil servant is entitled to back benefits where the order against the civil servant passed by the department is held illegal by the court.

Seeking redressal of my grievances, your honour is most humbly requested that keeping in view the law and verdicts of the Apex court on the same question of law, my salaries may kindly be ordered to be released for the intervening period to overcome my agonies facing since the passing of transfer order on 6th April, 2019 which has already been held illegal by the KP Service Tribunal.

Yours' Obedient


Shabana Naz

Senior Arabic Teacher,
GGHS Mahoo Dheri.


ATTSTEL

بعدالت

KP Service Tribunal, Peshawar

Petitioner

2ء منجانب

Shabana No 2
بنام

vs

Govt of KP

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

Asad Mahmood, Advocate Peshawar کیلئے

آن مقام

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

ASAD MAHMOOD
Advocate
20
&
Taqi Ahmad Khan

المترقوم