


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 79/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.01.2024	<p>The implementation petition of Mr. Irfan Ullah submitted today by Sarwar Khan Kundi 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</p> <p> REGISTRAR</p>

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR, CAMP AT D.I. KHAN.**

Implementation/Execution Petition No. 79..... of 2024.

**Khyber Pakhtukhwa  
Service Tribunal**

Diary No. \_\_\_\_\_

Irfan Ullah .....Petitioner.

Dated: \_\_\_\_\_

**VERSUS**

Assistant Director Local Govt. of Rural Development  
Department etc

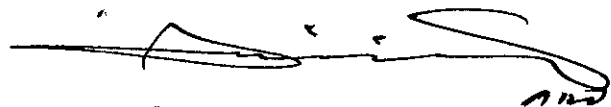
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Your Humble Petitioner

Irfan Ullah  
Through Counsel

Dated: 13/01/2024



**Sarwar Khan Kundi**  
**Advocate Supreme Court of Pakistan,**  
**Stationed at Dikhan.**

0346 9497 521

①

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR, CAMP AT D.I.KHAN.**

Implementation/Execution Petition No. 79..... of 2024

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 10612

Dated 17-1-2024

**Irfan Ullah** S/o Mir Adam Resident of Behram khel Tehsil  
Ghazni Khel & District Lakki Marwat.

**Naib Qasid** Village Council Adamzai Lakki Marwat.

.....Petitioner

**V E R S U S**

1. Assistant Director Local Government & Rural Development Department, District Lakki Marwat.
2. Director General, Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Local Government & Rural Development Department, KP Peshawar.

**Respondents**

**IMPLEMENTATION PETITION UNDER  
SECTION 36, CODE OF CIVIL PROCEDURE  
AND ORDER 21 CODE OF CIVIL  
PROCEDURE, ORDER 21 RULE 10 READ  
WITH SECTION 151 OF CODE OF CIVIL  
PROCEDURE (ACT-V OF 1908) OF THE  
ORDER DATED 06/11/2023 IN Service  
appeal No. 1774 of 2022 REGARDING  
REINSTATEMENT INTO SERVICE WITH ALL  
BACK BENEFITS IN LETTER AND SPIRITS.**

**Respectfully sheweth: -**

1. That Petitioner filed a service appeal No. 1774 of 2022 before this Honourable Tribunal. Detail which is available in the service appeal.
2. That thereafter, the respondents appear before this Honourable Tribunal and submit the written statement.
3. That after hearing both the parties, the service appeal was decided in favour of petitioner and the petitioner



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was reinstated into service with all back benefits through order dated 06/11/2023. Copy of order dated 06/11/2023 is enclosed as **Annexure "A"**.

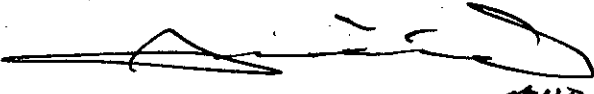
4. That thereafter, the petitioner filed an application to the respondents for compliance of order dated 06/11/2023 and the petitioner further prayed that my this application may treat as my arrival report on duty, but all in vain. Copy of application is enclosed as **Annexure "B"**.
5. That the respondents are not obeying the judgment of this Honourable Tribunal. But the respondents are reluctant the matter on one pretext to another.

***In view of the above, it is, therefore, most respectfully prayed that on acceptance this petition, may kindly implement the judgment dated 06/11/2023 passed by this Honourable Tribunal in Service Appeal No 1774 of 2022.***

Your Humble Petitioner

**Irfan Ullah**  
Through Counsel

Dated: 13/01/2024

  
**Sarwar Khan Kundi**  
**Advocate Supreme Court of Pakistan,**  
**Stationed at Dikhan.**

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**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR, CAMP AT D.I. KHAN.**

Implementation/Execution Petition No..... of 2024.

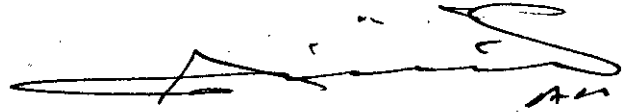
Irfan Ullah .....Petitioner

**VERSUS**

Assistant Director Local Govt. of Rural Development  
Department etc

AFFIDAVIT

I, **Sarwar Khan Kundi Advocate Supreme Court of Pakistan, counsel for the appellant**, do hereby solemnly affirm and declare on OATH that the contents of the implementation petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable Tribunal.



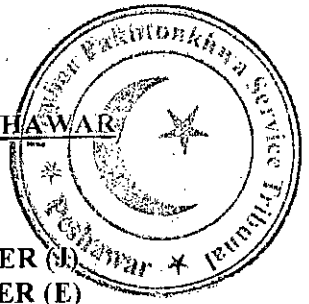
Deponent

12201-47363799

03469497321

(4)

"A"



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1774/2022

BEFORE: **MRS. RASHIDA BANO** ... **MEMBER (J)**  
**MR. MUHAMMAD AKBAR KHAN** ... **MEMBER (E)**

**Irfan Ullah S/O Mir Adam Khan, R/O Behram Khel, Lakki Marwat Ex-Naib Qasid Village Council, Adam Zai Lakki Marwat.** ... (Appellant)

**VERSUS**

1. Assistant Director, Local Government & Rural Development Department Lakki Marwat.
2. Director General, Local Government, Election & Rural Development Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Local Government, Election & Rural Development Department, Government of Khyber Pakhtunkhwa, Peshawar.
4. Sher Alam Khan, S/O Shah Jehan, R/O Village Adam Zai, Naib Qasid Adam Zai, Lakki Marwat.

... (Respondents)

Mr. Arbab Sailful Kamal  
Advocate ... For Appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For Respondents

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Date of Institution..... 09.12.2022  
 Date of Hearing.....06.11.2023  
 Date of Decision.....06.11.2023

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):**The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal, order dated 18.04.2018 of respondent No. 1 and appointing respondent No. 4 as Naib Qasid Village Council be set aside and appellant be reinstated in service with all consequential benefits.**

**ATTESTED**  
  
**EXAMINER**  
**Khyber Pakhtunkhwa**  
**Service Tribunal**  
**Peshawar**

2. Brief facts of the case are that on 04.07.2015 respondents advertised some post of Class IV servant for Village Councils. After going through the prescribed procedure of selection and upon commendation of Selection and Recruitment Committee, the appellant was appointed as Naib Qasid on regular basis vide order dated 18.03.2016. The appellant assumed the charge of the post and started performing duty against the said post. Private respondent No.4 filed Writ Petition before the Hon'ble High Court, Bannu Bench to declare the order of appointment of the appellant as illegal and prayed for his appointment against the said post. The petition was disposed of on 28.02.2018 and the case was remanded back to respondent No. 1 to re-examine the issue. After receipt of the judgment respondent No.1 issued show cause notice on 30.03.2018 which was replied on 10.04.2018 by the appellant but respondent No.1 vide impugned order dated 18.04.2018 terminated services of the appellant with immediate effect and respondent No.4 was appointed in his place vide order dated 19.04.2018. Feeling aggrieved, appellant filed departmental appeal, which was not responded hence the instant 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel appearing on behalf of appellant argued that the appellant had applied for the post of Naib Qasid against the his own village council and it was incumbent upon the competent authority to appoint him in his own Village Council, but the appellant was posted against another village council which was not illegal, as the appellant was selected against his own village council on merit. He further argued that upon recommendation of DSC, the appellant was appointed vide order dated 18.03.2016 and he was gone through the process of

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

medical fitness, proper arrival and construction of his service book and served against the post for almost three years and valuable rights have been accrued to him, which cannot be taken back from him.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant could not be accommodated due to non-availability of the post and termination, was an appropriate action on the part of respondent. He further contended that no malafide could be pointed out by the appellant on part of respondents rather the termination of the appellant was in compliance with the judgement of Hon'ble Peshawar High Court, Bannu Bench.

6. Perusal of reveals that the Local Government Department had advertised certain Class-IV vacancies vide advertisement dated 04-07-2015. Such Class-IV vacancies were meant for village/neighborhood councils. It had been specifically mentioned in the advertisement that preference will be given to the candidates belonging to the same Village Council, which means that candidates from adjoining villages can also be considered but preference will be given to candidate of the same Village Council. The appellant was also one of the candidates, who had applied for his own Village Council. After due process of selection, the appellant was appointed as Naib Qasid vide order dated 15-03-2016, but was posted against another Village Council. In a similar manner appellant alongwith some other class iv were also selected but were appointed against Village Councils other than their own. One of the un-successful candidates filed a writ petition No 432-B/2018 with the contention that candidate of other Village Council had been appointed against his Village Council. The Honorable Peshawar High Court, Bannu Bench remanded the case to respondent No. 1 vide judgment dated 18-09-2018. Operative part of the judgment is reproduced as under:

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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*"this case is send back to the Assistant Director, Local Government and Rural Development, Lakki Marwat to re-examine the appointments of the private respondents (present appellants), merit position of the petitioners (present respondents) and pass an appropriate order keeping in mind the rules, policy and the terms and conditions incorporated in the advertisement for appointment as Class-IV employees, after providing the parties an opportunity of hearing"*

7. In pursuance of the judgment, respondents No. 1 terminated all those including the appellant, who were appointed against villages other than their own. The appellant was terminated vide order dated 16-01-2019 under the pretext that he had provided wrong information regarding his Village Council, but in the meantime, the appellant had served against the post for almost three years and developed a vest right over such post. It however was the statutory duty of the appointing authority to check their documents in a specified time period which however was not done by the respondents well in time and to this effect, the Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 has held that authority having itself appointed civil servant could not be allowed to take benefit of its lapses in order to terminate service of civil servant merely because it had itself committed an irregularity in violating procedure governing appointment. Appointment of the appellant was made by competent authority by following the prescribed procedure, petitioners were having no nexus with the mode of selection process and they could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice; order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in favor of the appellant. Reliance is placed on 2017 PLC (CS) 585. It was also astonishing to note that the same office, which had issued appointment order of the appellant,

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SECRETARY  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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had declared such order as illegal. It would be beneficial to refer to the judgment reported as 2006 SCMR 678, which have held that it has been noted in a number of cases that departmental authorities do show haste at the time of making such appointments when directives are issued to them by the persons who are in helm of the affairs without daring to point out to them that the directions are not implementable being contrary to law as well as prevalent rules and regulations. In fact such obedience is demonstrated by the concerned officers of the department to please the authorities governing the country just to earn their time being pleasure but on the change of regime and due to their such illegal acts the employees who were appointed suffer badly without any fault on their part and then even nobody bothers for their further career and in such a scenario, the appointing authority is required to be taken to task and not the civil servant. The instant case is a classical example of the case referred by the apex court in the above mentioned judgment.

8. In pursuance of the judgment of the Honorable High Court, the respondent No. 1 accommodated the appellants but did not afford appropriate opportunity to respondents (the present appellant), as by every definition, they were civil servants and they were not supposed to be terminated by a single stroke of pen, as proper procedure is available for dealing with such cases, where the authority was required to conduct a detailed inquiry against respondent No. 1 for the lapses and action if any was required against the appellant, was supposed to be under the disciplinary rules, where proper opportunity was required to be afforded to him, as he is also of the same domicile and having valid reasons to show that his appointment was legal, which however was not done by the respondents.

9. The Tribunal observed that appointment of an employee, if made illegally, could not be withdrawn or rescinded instead action must be taken against the appointing authority for committing a misconduct by making illegal appointments as per his own admission. In the instant case, the appointment so made was not

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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illegal, hence the appellants has made out a good case for indulgence of the Tribunal.

10. It is pertinent to mention here that case of the appellant is similar to appellants in service appeal No. 1225/2019 which was accepted by this Tribunal on 27.01.2022, so on the basis of similarly placed employees, appellant also deserve the same treatment and question of limitation in such like cases are immaterial as it is held by the apex court of the country. --Civil service— Appointment orders, restoration of—relief of restoration of appointments orders granted to similarly and equally placed employees—present employees/respondents were appointed on the same terms and conditions of service as that of similarly placed employees—(earlier litigants) who had been given relief of restoration of their appointment orders by declaring the orders of their withdrawal/cancellation as null and void—present respondents were hired and fired together in the same manner as earlier litigants and were standing on the same pedestal as them —both sets of appointees could not be separated from each other with regard to their appointment and dismissal—Only difference between the two sets was that the earlier group/earlier litigants litigated for their rights and second group, i.e the present respondents, did not go into litigation earlier and through present litigation sought the relief already given to the first group who litigated—to claim such a relief was the fundamental right of the respondents and the Constitution extended protection to such right and as they could not be treated differently; this was the mandate of Art, of 25 of the Constitution—Respondents being equally and similarly placed as the earlier litigants, they become entitled to the same relief which was extended to them— Appeals were dismissed. Reliance is placed on 2021 SCMR 1313.


11. We are of the considered opinion, that the appellant has not been treated in accordance with law and he was illegally removed from service. In view of

**ATTESTED**  
  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

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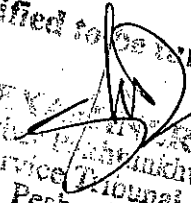
the foregoing discussion we accept the instant appeal, the impugned order of termination is set aside and appellant is reinstated into service with all back benefits with further direction that private respondent may not be suffer for lapses of the respondent, hence also be accommodated. Costs shall follow the event. Consign.

12. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6<sup>th</sup> day of November, 2023.

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

Certified to be true copy  
  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 04-01-24  
Number of Words 70  
Copying Fee 35/-  
Urgent 5/-  
Total 40/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 04-01-24  
Date of Delivery of Copy 04-01-24

11


**ORDER**


06.11.2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we accept the instant appeal, the impugned order of termination is set aside and appellant is reinstated into service with all back benefits with further direction that private respondent may not be suffer for lapses of the respondent, hence also be accommodated. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

To

(12) (B))

1. Assistant Director, Local Government  
& Rural Development Department,  
Lakki Marwat.
2. Director General, Local Government  
& Rural Development Department,  
Peshawar.
3. Secretary, Government of KP,  
Local Government & Rural  
Development Department,  
KP, Peshawar.

**Subject: - COMPLIANCE OF JUDGMENT DATED 06-11-2023 OF  
THE HON'BLE SERVICE TRIBUNAL, PASSED IN  
SERVICE APPEAL NO. 1774/2022 IN LETTER AND  
SPIRIT.**

Respected Sir,

Please comply with the order dated 06-11-2023 of the  
Hon'ble Service Tribunal, KP, Peshawar passed in the said  
Service Appeal in letter and spirit and obliged. (Certified  
copy attached)

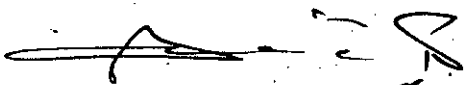
More so, this application may also be treated as my annual  
report.

Humble Applicant

عرفان اہلب

Irfan Ullah  
S/O Mir Adam Khan,  
R/O Benram khat,  
Lakki Marwat,  
Nab Qasid, Village Council  
Adam Zai, Lakki Marwat.  
Cell No. 0342-4958004

Approved

  
17/11/23

Dated. 13-12-2023

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SARWAR KHAN KUNDI  
Advocate Supreme Court of Pakistan  
12202-4736379-9

وکالت نامہ

LIFE MEMBER

ARID SHAHID ZUBERI  
President

MUQTEDIR ACHYAR SHABIR  
Secretary



کورٹ  
فیس

Before The Honorable Khyber Pakhtunkhwa  
Service Tribunal, Peshawar Camp at DTK  
Irfan Ullah Assistant Director  
LGA RD Lakky Mahood

باعث تحریر نامہ

DTK

Sarwar Khan Kundi Advocate SC

مقدمہ: بموجب بالا عنوان میں اپنی طرف داخلہ کردی و تقاب دہی برائے پیشی یا تفریق مقدمہ بنام  
کو حسب ذیل شرٹنگ پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا بنا بذریعہ جو جو عدالت حاضر ہوتا رہوں گا اور ہر وقت نکارے جانے مقدمہ وکیل صاحب  
موصوف کو اطلاع دے کہ ساتھ عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب  
موصوف ان کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام چکھری کے علاوہ یا چکھری کے اوقات سے پہلے یا چھپے یا بروز تعطیل  
بیرون کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر چکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا چکھری کے اوقات کے آگے یا چھپے پیش ہونے  
پر منظر کوئی اتناں چھپے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا محبت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔  
کوئی معاوضہ یا اخذ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دشوی یا جواب دہی یا درخواست اجراء اسمائے ذکر  
نظر ذیل اتناں گھرانے و ہر قسم درخواست ہر قسم کے بیان دینے اور ہم ٹاشی یا راضی نامہ یا فیصلہ برحالت کرنے اقبال دہی کا بھی اختیار ہو گا اور بصورت مقرر ہونے  
تاریخ پیشی مقدمہ مزکورہ دوران از چکھری صدر چکھری مقدمہ مزکورہ نظر ثانی اہل و گمانی و برآمدگی مقدمہ یا منوفی ذکر یک طرفہ یا درخواست حکم استانی یا قرنی  
یا گرفتاری قبل از فیصلہ اجراء ذمہ داری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ جگہ چکھری کا اختیار ہو گا اور تمام ساختہ پرداخت صاحب موصوف مثل کردہ  
از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مزکورہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی  
اہل و گمانی یا دیگر مسائل و مقدمہ مذکورہ کسی دوسرے وکیل یا ہر مزکورہ اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں دہی اور دینے  
اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کہ ہر جانب التواہ پڑے گا وہ صاحب موصوف کا حق ہو گا کہ  
صاحب موصوف کو پوری نہیں تاریخ پیشی سے پہلے امانت کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پوری نہ کریں اور ایسی صورت  
میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

2024

ضمیموں

لہذا وکالت نامہ لکھ دیا ہے تاکہ مستند ہے

13

مضمون وکالت نامہ میں لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Irfan Ullah

Applicant

Accepted

عرفان اللہ

[Signature]

13/1/2024

0362-4958006

0362-9497321

عوبان ٹیل ممبر