

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT  
CAMP COURT ABBOTTABAD.

Miscellaneous Application 12(2) CPC No.422/2022

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

1. Administration Office, Peshawar High Court, Peshawar though Registrar High Court, Peshawar.
2. District & Sessions Judge, Abbottabad.

.... (Petitioners)

VERSUS

1. Shakeel Ashraf Ex-Junior Clerk, Session Court, Abbottabad.

.... (Respondent)

Mr. Asif Masood Ali Shah  
District Attorney

... For petitioners

Mr. Muhammad Aslam Tanoli  
Advocate

... For respondent

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Date of Institution.....25.07.2022  
Date of Hearing.....25.01.2024  
Date of Decision.....25.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant petition instituted under section 12(2) of the Code of Civil Procedure 1908 with the prayer copied as below:

**“It is therefore, humbly prayed that on acceptance of this petition, the judgment dated 11.01.2022 may graciously be set-aside and the titled appeal may be dismissed.”**

2. Brief facts of the case are that respondent namely Shakeel Ashraf was serving in the District Judiciary Abbottabad as Junior Clerk. Vide order dated 26.08.2009, he was dismissed from service, against which,



he filed departmental appeal, followed by Service Appeal No.1374/2010. That this Tribunal vide order dated 24.10.2017 remanded the case for de-novo inquiry to be conducted within ninety days from the date of receipt of judgment. Accordingly, de-novo inquiry was initiated but the respondent was allegedly not appeared before the inquiry, therefore, was given penalty of reduction of lower stage vide order dated 10.02.2018. That the respondent filed execution petition No.97/2018 for his reinstatement and vide order dated 16.10.2018 passed in the execution petition, the petitioners were directed to reinstate the respondent. During the pendency of the said execution petition, the respondent filed appeal No.873/2018 against the order dated 10.02.2018. That in compliance of the order of the Tribunal passed in execution petition, the petitioners reinstated the respondent with direction to him to report for duty within seven days and in case of failure, the reinstatement order shall be deemed as withdrawn. That the respondent allegedly failed to report for duty, therefore, he was removed from service vide order dated 31.10.2019 and the appeal No.873/2018 had allegedly become infructuous but the Tribunal passed the order for reinstatement of the respondent in the said appeal vide order dated 11.01.2022, hence, the instant 12(2) petition.

3. We have heard learned Deputy District Attorney for the petitioners and learned counsel for the respondent and have gone through the record and the proceedings of the case in minute particulars.

4. Learned Deputy District Attorney argued that the respondent had concealed true facts from this Tribunal through misrepresentation as



the judgment dated 11.01.2022 was passed in service appeal No.873/2018, wherein, the penalty of reduction had been assailed while the order dated 10.02.2018 had been set aside in the EP No.97 of 2018. Further submitted that the order dated 16.10.2018 had got finality and the judgment was not maintainable; that both the orders of the Tribunal are self-contradictory. Lastly, he argued that the petitioners were informed regarding the decision at belated stage and respondent has concealed the facts from the Tribunal before passing the order dated 11.01.2022, therefore, he requested for setting aside the judgment.

5. Conversely, learned counsel for the petitioner argued that the respondents were well aware of the order dated 11.01.2022 as they had contested the appeal. Further submitted that the petitioner ought to have file appeal before the Supreme Court of Pakistan and instead, they had filed the instant petition, which was not maintainable. Lastly, he concluded that the judgment had rightly been decided by this Tribunal as the Tribunal had examined all aspects of the case. Therefore, he requested that the judgment impugned in this petition might be maintained and the instant petition might be dismissed with cost.

6. Petitioners filed instant petition, under 12(2) of civil procedure code 1908 for setting aside judgment delivered by this tribunal on 11.01.2022 in service appeal bearing No 873/2018 titled as "Shakeel Ashraf Vs. Administrative Officer of Peshawar High Court and one other". Main ground taken by the petitioners in the instant petition in the concealment of fact of filling of execution petition by the

petitioner bearing No 97 wherein petitioner were directed to reinstate the respondent vid order dated 16.10.2018 and reinstatement order dated 23.10.2019 issued in compliance of direction given in execution petition bearing No 97 vide order dated 10.10.2018.

7. Perusal of file of service appeal reveals that although appellant had not mention in his service appeal filed on 05.07.2018 the factum of pendency of the execution petition bearing no 97 because no order was passed at that time by this Tribunal and execution petition was decided on 16.10.2018 after filling of service appeal bearing No 873/2018. It is also evident that respondent when filed rejoinder on 10.05.2019 clearly mentioned about filing of execution petition No.97 and order dated 16.10.2018 wherein present petitioner were directed to reinstate the respondent into service. Respondent also along with rejoinder annexed copy of order dated 16.10.2018 as Annexure "A".

8. It is also pertinent to mention here that respondents submitted their reply to service appeal No.873/2018 on 08.03.2019 which is after passing of order in execution petition No.97 i.e. 16.10.2018 but there is no mention of execution petition No.97 in reply filed by respondents. Perusal of order sheets reveals that superintendent of the petitioner was present even after passing of reinstatement order dated 23.10.2020 but respondents even at the time of arguments had not informed the court/tribunal about reinstatement of the respondents order dated 23.10.2020, which in a way concealment on their part.


Respondent contended that order of reinstatement dated 23.10.2020 was not communicated to him by the petitioner when representative of the petitioner was asked to show service/proof of communication of


reinstatement order dated 23.10.2020 upon respondent but he failed to show it on record which means that order dated 23.10.2020 was not communicated to the respondent when same was not communicated then how respondent will be in a position to brought it into knowledge of this tribunal.

9. Perusal of order of reinstatement dated 23.10.2020 reveals that condition of joining within 7 days from the date of issuance of order, otherwise the order shall stand withdrawn automatically and appropriate order be passed under the Khyber Pakhtunkhwa (E&D) Rules 2011, is not in-accordance with direction of this tribunal as in order dated 16.10.2018 there is no mention of joining duties by the respondent within seven days. So, order to this extent is not in-accordance with law, rule and direction of this tribunal, and has no legal effect. Otherwise too its petitioners who failed to discharge their burden of conducting de-novo inquiry as a result this tribunal passed order dated 16.10.2018. Therefore, respondent will not be penalized for it by mentioning of condition of seven days for joining duties without information to him.

10. For what has been discussed we are unison to dismissed instant petition. Costs shall follow the event. Consign.

11. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25<sup>th</sup> day of January, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)  
Camp Court Abbottabad

  
(RASHIDA BANO)  
Member (J)  
Camp Court Abbottabad

**ORDER**  
**25.01.2024**

1. Mr. Asif Masood Ali Shah learned Deputy District Attorney along with Rizwan Parvez, Superintendent for the petitioners present. Learned counsel for the respondent present.

2. Vide our detailed judgment of today placed on file, we are unison to dismissed instant petition. Costs shall follow the event.

Consign.

3. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25<sup>th</sup> day of January, 2024.*



**(MUHAMMAD AKBAR KHAN)**  
Member (E)  
Camp Court Abbottabad



**(RASHIDA BANO)**  
Member (J)  
Camp Court Abbottabad