


FORM OF ORDER SHEET

Court of _____

12(2) CPC Application No. 151 /2024

S.No.	Date of order proceeding	Order or other proceedings with signature of judge
1	16/02/2024	<p style="text-align: center;">3</p> <p>The application U/S 12(2) CPC in Execution Petition no. 963/2023 submitted by Mr. Khalid Mahmood Advocate. It is fixed for hearing before Single Bench at Peshawar on _____. Original file be requisitioned. Parcha peshi is given to counsel for the applicant.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

12(2) CPC in EXECUTION NO. 963 /2023

Shanishah VS GOVT. OF KPK & OTHERS

APPLICATION FOR FIXATION OF THE ABOVE TITLED CASE AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

5. That the above mentioned case is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
6. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
7. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
8. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the case may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated:

15/2/2024

Through

COUSER
Khair Mahmood
Advocate High Court
ADVOCATE SUPREME COURT

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

Petition u/s 12(2) CPC No. 151 /2024

In Implementation Petition No963/2023

In line with reference to

Service Appeal No. 137 of 2022

Mst. Shamshad Bibi, Sub Divisional Education
Officer (female) Tehsil Paharpur, District D.I.Khan

Petitioner

VERSUS

1. **Secretary to Govt of Khyber Pakhtunkhwa Elementary & Secretary Education Department, Peshawar.**
2. **District Education Officer (F) Dera Ismail Khan, Education.**
3. **District Account Officer, D.I.Khan.**

Respondents


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Yours Humble Applicant

(Mst shamshad Bibi)
Through Counsel

Dated: 15/2 /2024


Khalid Mahmood
Advocate High Court
Stationed at DIKhan
03364330001

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

Petition u/s 12(2) CPC No. 151 /2024

In Implementation Petition No963/2023

In line with reference to
Service Appeal No. 137 of 2022

Khyber Pakhtukhwa
Service Tribunal

Diary No. 11216

Dated 16-02-2024

Mst. Shamshad Bibi, Sub Divisional Education
Officer (female) Tehsil Paharpur, District D.I.Khan

Petitioner

VERSUS

- 3/
4. Secretary to Govt of Khyber Pakhtunkhwa Elementary & Secretary Education Department, Peshawar.
 5. District Education Officer (F) Dera Ismail Khan, Education.
 6. District Account Officer, D.I.Khan.

Respondents

APPLICATION UNDER SECTION 12(2) OF CPC AGAINST ORDER DATED 14.02.2024 PASSED BY HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN EXECUTION PETITION NO.963/2023, WHEREBY THE HONORABLE COURT CONSIGNED THE EXECUTION PETITION WITHOUT HEARING OF COUNSEL AND THEREBY THE RESPONDENTS SUCCEEDED IN GETTING THE VERDICT OF THIS HONORABLE COURT AGAINST THE APPLICANT ON THE BASIS OF FRAUD, MISREPRESENTATION AND ALSO WITHOUT HEARING OF COUNSEL.

PRAYERS

ON ACCEPTANCE OF THIS PRESENT APPLICATION AND BY SETTING ASIDE THE JUDGEMENT DATED 14.02.2024 PASSED BY THIS HON'BLE TRIBUNAL IN EXECUTION PETITION NO.963/2023, THE VERDICT PASSED IN FAVOUR OF RESPONDENT AND AGAINST THE APPLICANT, MAY VERY GRACIOUSLY BE SET ASIDE TO THE EXTENT OF APPLICANT

Respectfully Sheweth,

Concise Facts

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1. That petitioner was posted as SDEO (F) Paharpur vide notification dated 07.10.2021 and was transferred vide notification dated 12.01.2022 against which the petitioner filed service Appeal No. 137 of 2022 before this Honourable Tribunal. On fixation of the case, after having heard the appellant/petitioner at great length vide judgment dated: 30.09.2022 passed by this Hon'ble Tribunal, the Notification dated 12.01.2022 was set-aside/cancelled and thereby appeal of the petitioner was accepted.
2. That on 31.01.2022, Honorable Tribunal suspended the notification dated 12.01.2022 and fixed for reply on 24.02.2022 but respondent did not complied the order of Honorable Tribunal and posted Mst. Samina Shehnaz as SDEO Paharpur vide notification dated 21.12.2022 in place of petitioner and on 22.02.2022 withdrawn the said notification.
3. That respondent implemented the order of Honorable Tribunal Dated 31.01.2022 on 22.02.2022 for just two days till 24.02.2022.
4. That after 24.2.2022 respondents violated the order dated 31.1.2022 and private respondent (Sonia Nawaz) continued to hold the office of SDEO Paharpur and due to retirement of Honorable Chairman Service Tribunal, the Honorable Service Tribunal was dysfunctional, therefore aggrieved from act of respondents, petitioner filed CM petition No 195-D/2022 in Peshawar High Court Bench DIKhan and vide order dated 08.03.2023 of Honorable Court disposed-off.
5. That petitioner once again filed writ petition no 161-D/2022 before Honorable Peshawar High Court DIKhan Bench and vide order dated 15.03.2022 Honorable Court disposed of meaning by petitioner was not permitted to hold the post of SDEO(F) Paharpur by the respondents **from 12.01.2022 to 17.03.2022 i.e. more than 2 months.**
6. That in utter disregard of the Judgment, again posted the petitioner as OSD (report to directorate) vide notification dated 26.05.2023, aggrieved from this, petitioner filed execution petition no 493/2023 before the Honorable Tribunal and

respondent cancelled the notification dated: 26.05.2023 vide notification dated 21.08.2023 submitted before the Honorable Tribunal on 24.08.2023 i.e., **after 3 months.**

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7. That once again respondent No: 8 (Sonia Nawaz) was transferred in place of petitioner vide impugned notification No: 05.12.2023 as alleged in compliance of judgment of Service Tribunal dated: 03.11.2023 in Service Appeal No: 1403/2023 titled "**Noreen Saba & others VS Govt of KPK**", however Sonia Nawaz has already served as SDEO (F) Paharpur more than 2 Years.

8. That it is pertinent to mention here that in Service Appeal No: 1403/2022 vide order dated: 13.11.2023 there was no direction about petitioner, however in Service Appeal No: 1403/ 2022 where Sonia Nawaz was respondent & connected Appeal No: 1442/2023, where Sonia Nawaz was Petitioner and dispute was among three SDEO (F) i.e. Mst. Nighat Shaheen, Mst. Sonia Nawaz & Noreen Saba for the post of SEDO (F) Paroa, SDEO (F) Tank & SEDO (F) Hangu but respondent utter disregard of Judgment dated: 30.09.2022 displace the petitioner and posted the Sonia Nawaz as SDEO (F) Paharpur instead of Paroa.

9. That normal tenure is 3 years but petitioner was permitted as SDEO (F) Paharpur **one year and 9 months only.**

10. That applicant filled execution petition No.963/2023 and Respondents filled reply and finally fixed on 14.02.2024 for arguments (**copy of Execution Petition No.963/2023 is annexed as A**)

11. That the Counsel for petitioner was unable to attend the Tribunal at Peshawar on 14.02.2024. Therefore, submitted adjournment application dated 12.02.2024, which was placed on filled (**copy of Adjournment application is annexed as B**).

12. That the reply of Respondent that the petitioner have completed her normal tenure i.e two years which is fraud and misrepresentation. (**copy of Comments is annexed B₁**)

13. That the Honorable Tribunal without hearing the counsel, consigned the petition on 14.02.2024. Therefore, the applicant

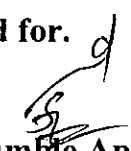
approaches this Honourable Tribunal inter alia the following grounds. (Copy of order dated 14.02.2024 is annexed as C).

GROUNDS


- i. That the impugned judgment dated 14.02.2024 in Execution Petition No.963/2023 is outcome of fraud, misrepresentation and also without hearing of counsel. Thus same is liable to be sat-aside invoking provisions of section 12(2) CPC.
- ii. That it is far-fetched to mention here that despite clear and well explained judgment in favour of petitioner, the respondents/Department without any lawful reason have lurk in hesitation to fully implement the judgment of this Hon'ble Court, rather violated the essence and validation of the judgment whereas the law prohibit them to do as such, but the department/ respondents in careless manner, flatly denying the judgment of this Tribunal and in-respect of which, they may be dealt with in accordance with law viz to comply with the subject judgment.
- iii. That the judgment dated 30.09.2022 in *service appeal*, the Department / respondents have not complied so far in true essence and spirit, despite various resorts of petitioner to the Secretary Education, Peshawar / Competent authority, rather issued impugned Notification dated: 05.12.2023 by posting the same respondent No: 8 (Sonia Nawaz) as SDEO (F) Paharpur DIKhan in utter disregard of the judgment of this Hon'ble Tribunal.
- iv. That Counsel of the petitioner may please be allowed to raise additional grounds at the time of arguments.

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It is therefore, humbly prayed that the instant application may very graciously be accepted as prayed for.


**Yours humble Applicant
Through Counsel**

Dated: 15/2/2024


Khalid Mahmood
Advocate High Court
D.I.Khan

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

Petition u/s 12(2) CPC No. _____/2024

In Implementation Petition No963/2023

In line with reference to

Service Appeal No. 137 of 2022

Mst. Shamshad Bibi, Sub Divisional Education
Officer (female) Tehsil Paharpur, District D.I.Khan

Petitioner

VERSUS

1. **Secretary to Govt of Khyber Pakhtunkhwa** Elementary &
Secretary Education Department, Peshawar.
2. **District Education Officer (F)** Dera Ismail Khan, Education.
3. **District Account Officer**, D.I.Khan.

Respondents

AFFIDAVIT

I, **Mst Shamshad Bibi**, Sub Divisional Education Officer (female),
Education Department, D.I.Khan, the petitioner, do hereby solemnly affirm
and declare on oath that all the Para-wise contents of this **application** 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.

Dated: 15/2

Identified by Counsel:

Khalid Mahmood AHC



Deponent

121014389262-8

Anex (A)
(H)
(6)

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

Implementation Petition No: 963 /2023

In line and with reference to
Service Appeal No. 137 of 2022

Mst. Shamshad Bibi, Sub Divisional Education
Officer (female) Tehsil Paharpur, District D.I.Khan

Petitioner

VERSUS

1. Secretary to Govt of Khyber Pakhtunkhwa Elementary & Secretary Education Department, Peshawar.
2. District Education Officer (F) Dera Ismail Khan, Education.
3. District Account Officer, D.I.Khan.

Respondents

**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED: 30.09.2022 PASSED BY THIS
HON'BLE TRIBUNAL IN SERVICE APPEAL
NO.137/2022, WHEREBY, THE APPEAL OF
PETITIONER WAS ACCEPTED AND THE IMPUGNED
NOTIFICATION DATED: 12.01.2022 REGARDING
TRANSFER AND POSTING OF PETITIONER WAS
DECLARED ILLEGAL AND INVALID, CONSEQUENTLY
STANDS SET ASIDE AND CANCELLED.**

PRAYERS

On acceptance of this implementation Petition this Hon'ble Tribunal may please be directed the respondents to fully and effusively make compliance of the Judgment dated 30.09.2022 of this Honourable Tribunal in true letter & spirit without any further delay.

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ATTESTED

KHALID MEHMOOD
Advocate
Stationed at D.I.Khan

Respectfully Sheweth,

Concise Facts

1. That petitioner was posted as SDEO (F) Paharpur vide notification dated 07.10.2021 (Annexure-A) and was transferred vide notification dated 12.01.2022 (Annexure-B) against which the petitioner filed service Appeal No. 137 of 2022 before this Honourable Tribunal. On fixation of the case, after having heard the appellant/petitioner at great length vide judgment dated: 30.09.2022 passed by this Hon'ble Tribunal, the Notification dated 12.01.2022 was set-aside/cancelled and thereby appeal of the petitioner was accepted (Annexure-C).
2. That on 31.01.2022, Honorable Tribunal suspended the notification dated 12.01.2022 and fixed for reply on 24.02.2022 but respondent did not comply the order of Honorable Tribunal and posted Mst. Samina Shehnaz as SDEO Paharpur vide notification dated 21.12.2022 in place of petitioner and on 22.02.2022 withdrawn the said notification (Annexure-D) (D1)
3. That respondent implemented the order of Honorable Tribunal Dated 31.01.2022 on 22.02.2022 for just two days till 24.02.2022 (Annexure-E)
4. That after 24.2.2022 respondents violated the order dated 31.1.2022 and private respondent (Sonia Nawaz) continued to hold the office of SDEO Paharpur (Annexure-F & F1) and due to retirement of Honorable Chairman Service Tribunal, the Honorable Service Tribunal was dysfunctional, therefore aggrieved from act of respondents, petitioner filed CM petition No 195-D/2022 in Peshawar High Court Bench DIKhan and vide order dated 08.03.2023 of Honorable Court disposed of (Annexure-G).
5. That petitioner once again filed writ petition no 161-D/2022 before Honorable Peshawar High Court DIKhan Bench and vide order dated 15.03.2022 Honorable Court disposed of (Annexure-H) meaning by petitioner was not permitted to hold the post of SDEO(F) Paharpur by the

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ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at Peshawar

respondents from 12.01.2022 to 17.03.2022 i.e. more than 2 months.

6.

That in utter disregard of the Judgment, again posted the petitioner as OSD (report to directorate) vide notification dated 26.05.2023 (Annexure-I), aggrieved from this, petitioner filed execution petition no 493/2023 before the Honorable Tribunal and respondent cancelled the notification dated: 26.05.2023 vide notification dated 21.08.2023 (Annexure J) submitted before the Honorable Tribunal on 24.08.2023 (Annexure-K) i.e., after 3 months.

7.

That once again respondent No: 8 (Sonia Nawaz) was transferred in place of petitioner vide impugned notification No: 05.12.2023 as alleged in compliance of judgment of Service Tribunal dated: 03.11.2023 in Service Appeal No: 1403/2023 titled "Noreen Saba & others VS Govt of KPK" (Annexure-L), however Sonia Nawaz has already served as SDEO (F) Paharpur more than 2 Years. (Airt L)

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That it is pertinent to mention here that in Service Appeal No: 1403/2022 vide order dated: 13.11.2023 there was no direction about petitioner, however in Service Appeal No: 1403/ 2022 where Sonia Nawaz was respondent & connected Appeal No: 1442/2023, where Sonia Nawaz was Petitioner and dispute was among three SDEO (F) i.e. Mst. Nighat Shahcen, Mst. Sonia Nawaz & Noreen Saba for the post of SEDO (F) Paroa, SDEO (F) Tank & SEDO (F) Hangu but respondent utter disregard of Judgment dated: 30.09.2022 displace the petitioner and posted the Sonia Nawaz as SDEO (F) Paharpur instead of Paroa. (Airt M, N, M2) That normal tenure is 3 years (Annexure-M3) but petitioner was permitted as SDEO (F) Paharpur one year and 9 months only.

ATTESTED

[Signature]

KHALID MEHMOOD
Advocate High Court
Stationed at P. 119.

10.

It is pertinent to mention that petitioner is in promotion zone from SDEO (BPS-17) to DDO (BPS-18) and placed at serial #1 in district DIKhan which PSB will be conducted within near future (Annexure-N).

11.

That it is far-fetched to mention here that despite clear and well explained judgment in favour of petitioner, the

respondents/Department without any lawful reason have lurk in hesitation to fully implement the judgment of this Hon'ble Court, rather violated the essence and validation of the judgment whereas the law prohibit them to do as such, but the department/ respondents in careless manner, flatly denying the judgment of this Tribunal and in-respect of which, they may be dealt with in accordance with law viz to comply with the subject judgment.

12. That the judgment dated 30.09.2022 in *service appeal*, the Department / respondents have not complied so far in true essence and spirit, despite various resorts of petitioner to the Secretary Education, Peshawar / Competent authority, rather issued impugned Notification dated: 05.12.2023 by posting the same respondent No: 8 (Sonia Nawaz) as SDEO (F) Paharpur DIKhan in utter disregard of the judgment of this Hon'ble Tribunal, therefore, the petitioner approaches this Honourable Tribunal for implementation of judgment dated 30.09.2022 on inter-alia the following grounds.

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GROUND S

a. That the Judgment dated 30.09.2022 in the subject service Appeal is self-contained wherein was specifically stated that *"As a sequel to the above the service appeal is allowed with the direction to the respondent department to allow the appellant to continue on her present station of posting till completion of her normal tenure. The appeal is accepted in above terms."* but direction of this Hon'ble Tribunal has not yet been fully and wholly implemented.

b. That the judgment dated 30.09.2022 in the main service appeal of this Tribunal is self-explanatory, simple and clear and it did not require any further interpretation. But respondents tactfully, illegally and unlawfully twisted the same on technical grounds to smash the essence of judgment in order to sabotage the rights of petitioner. As, *Quoties in verbis nulla est*

ATTESTED



KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

ambiguities, ibi nulla exposition cantra verba fienda est which means "so long as there is no ambiguity in the words, there should be no interpretation contrary to the words" therefore, respondents have no lawful authority to go beyond the specific verdict of the *ibid* judgment.

c. That the scheme of the law is that in one proceeding the court/Tribunal determines the liability of a party and the corresponding right of the other party and incorporates them in the judgment/order and in another proceeding it executes the said order /judgment, i.e. at the instance of one party specifically enforces the liability against the other. There can be no execution or specific enforcement of a liability without a previous determination of the liability by a Court and incorporated in a formal document called judgment. In the instant matter, the liability and corresponding rights of the parties have rightly been determined and after passing the judgment, the respondents/department have not in entirety honored the decision of this Hon'ble Tribunal which act of respondents is nullity in the eye of law.

d. That the successive transfers of the petitioner to various stations within a span of one and half year are against the posting/transfer policy of the Provincial Government, which indicated that a Government servant should not be transferred, in ordinary circumstances, prior to completion of a period of three years at one place of posting. In this backdrop, the wisdom may also be derived from the judgment of Hon'ble Supreme Court 2011 P L C (C.S.) 935 (Supreme Court of Pakistan), whereby it is held that:-

----- S. 30 (3) --- Constitution of Pakistan
Art.212(3)--Successive Transfer -- Respondent was patwari who was transferred to three stations within a span of eight month--- Service Tribunal accepted appeal filed by respondent patwari and

3/3/

ATTESTED

KHALID MEWOOD
Advocate High Court
Stationed at D.I.Khan

6 (11)

set aside his transfer orders --- Validity ---

Successive transfer of respondent to three stations within a span of eight months were against posting/transfer policy of Provincial Government, which indicated that a government servant should not be transferred in ordinary circumstances, prior to completion of a period of three years at one place of posting --- Transfer order of respondent was passed during ban period, prematurely under political influence, as copy of the same was sent to private secretary to Provincial Minister for Revenue --- Tenure of posting of and officer or official of Government to a District Government was provided in S.30(3) of North-West Frontier Province Local Government Ordinance, 2001, as three years but any officer could be transferred earlier due to exigency of service or in public interest to an individual grievance and no substantial question of law of public importance was involved warrant interference by Supreme Court under Art.212 (3) of the Constitution---Supreme Court did not find any illegality or infirmity in the Judgment passed by Service Tribunal so as to justify interference by Supreme Court under Art.221(3) of the Constitution---Petition was dismissed.

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ATTESTED

[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

e. That the respondent /department without any lawful reason willfully not implementing the order of this Hon'ble, albeit, in doing so, this Tribunal while exercising its jurisdiction may deal with the matter with iron hands because the matter of honour and integrity or order of Court.

f. That it may not be out of place to mention here that order/Judgment or any Court or court shall be implemented/executed by the Tribunal concerned in its true essence and its implementation by the department/ authority concerned is the moral duty of that authority to obey it accordingly. For the sake of harmony

(18)

amongst the functionaries of the state, it is imperative for all concerned to fully honour the order/judgment of competent Court/Court. In such view of the matter, denial of respondents to effusively implement the Judgment passed in service appeal is beyond the settled parameters of jurisprudence.

- g. That it is imperative to highlight that the respondents, in sheer violation of Rules and policy in vogue by the Government of Khyber Pakhtunkhwa, have posted the respondent No: 8 to Tehsil Paharpur DIKhan who were not obliged to do so for the reason the petitioner has not completed the normal tenure of service at the incumbent position. In fact, the petitioner has no political legs to stand upon to make her transfer and posting according to her wish and whims, that's why, exploited at the hands of respondent despite having decision in her favour.
- h. That it is pertinent to mention here that the respondent have used this Honorable Tribunal for their own wish and whim, because there was no any direction in order dated: 13.11.2023 in Service Appeal No: 1403/2022 regarding petitioner and nor was petitioner disputed in Service Appeal No: 1403/2022 as well as 1441/2023.
- i. That Counsel of the petitioner may please be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that respondents may please be directed to make fully and effusively compliance of the Judgment dated 30.09.2022 of this Honourable Tribunal in true essence & spirit without any further delay.

Yours humble Petitioner
Through Counsel

Dated: 8/12/2023

Khalid Mahmood
Advocate High Court
D.I.Khan

ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

D.No 11080
12/2/2024

Anex B

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA

Implementation Petition No: 963 /2023

In line and with reference to

Service Appeal No. 137 of 2022

Mst. Shamshad Bibi, Sub Divisional Education
Officer (female) Tehsil Paharpur, District D.I.Khan

Petitioner

VERSUS

Govt of Khyber Pakhtunkhwa & Others.

Respondents

**APPLICATION FOR ADJOURNMENT IN ABOVE
TITLED EXECUTION PETITION WHICH IS FIXED FOR
14.02.2024 AT PRINCIPAL SEAT PESHAWAR.**

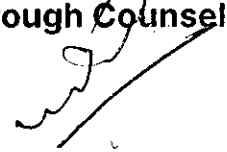
Respectfully Shewith,

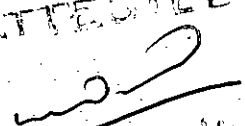
1. That above titled execution petition is fixed for 14.02.2024 at Principal Seat Peshawar.
2. That the counsel for petitioner is unable to attend the Honorable Service Tribunal Peshawar at Peshawar on 14.02.2024.
3. That the Bench is scheduled for Camp Court DIKhan on 19.02.2024 to 23.02.2024 and case is also related to DIKhan jurisdiction.

It is therefore, requested that above titled execution petition may be adjourned from 14.02.2024 and fix at Camp Court DIKhan which is scheduled from 19.02.2024 to 23.02.2024.

**Yours humble
Petitioner
Through Counsel**

Dated: 12/02/2024


Khalid Mahmood
Advocate High Court
D.I.Khan

ATTESTED

KHALID MAHMOOD
Advocate High Court
Stationed at D.I.Khan

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA

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Implementation Petition No: 963 /2023

In line and with reference to

Service Appeal No. 137 of 2022

Mst. Shamshad Bibi, Sub Divisional Education
Officer (female) Tehsil Paharpur, District D.I.Khan

Petitioner

VERSUS

Govt of Khyber Pakhtunkhwa & Others.

Respondents

APPLICATION FOR ADJOURNMENT IN ABOVE
TITLED EXECUTION PETITION WHICH IS FIXED FOR
14.02.2024 AT PRINCIPAL SEAT PESHAWAR.

AFFIDAVIT

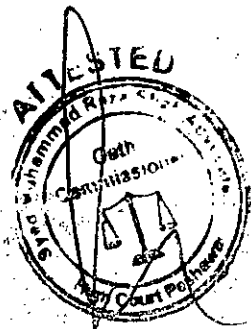
I, Khalid Mahmood Advocate High Court counsel for the Petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this application are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above petition is false and nothing material has been deliberately concealed.

Dated: 12/02/2024

Deponent

12101-26 84087-1

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



Amre (B1)
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**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.**

Execution Petition No. 963/2023, in Service Appeal No. 137/2022

MST Shamshad Bibi SDEO (Female)
Paharpur E&SE D.I. Khan **Appellant**

VS

Secretary E&SE, Khyber Pakhtunkhwa & others..... **Respondents**

PARAWISE COMMENTS FOR & ON BEHALF OF THE RESPONDENT

No. 1.


Respectfully sheweth,

The respondent No 1 most humbly submits as under:

Preliminary objections:

1. That with most respect this Honorable Tribunal has no jurisdiction to adjudicate upon order dated 05-12-20223.
2. That once an Execution Petition satisfied cannot be filed again with the same prayers of implementation which has implemented by the executing Court.
- 3- That the appellant has got no cause of action /locus standi for filing of this Execution Petition Application as there is no irregularity or non-compliance on the part of the respondents.
- 4- That the instant application is bad in its present form, therefore liable to be dismissed summarily.
- 5- That the appellant has concealed the material facts from this Honorable Tribunal hence the instant application is not maintainable.
- 6- That the applicant has not come to this Honorable Tribunal with clean hands.
- 7- That the applicant has filed the instant application with malafide intention just to pressurize the Respondents for gaining illegal Service benefits.
- 8- That the instant application is against the prevailing law hence not maintainable
- 9- That the applicant is estopped by her own conduct to file the instant application.

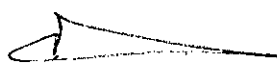
ATTESTED


KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

10- The the instant application is not maintainable in the present circumstances.

11- That the Notification dated 05-12-2023 of the Respondent is competent and in accordance with existing law/rules therefore, liable to be maintained.

ON FACTS:-

- 1. Pertains to the record of this Honorable Tribunal.
- 2. Incorrect the same is a past & close transaction & amounts in re-judication.
- 3. Incorrect, hence denied that same fact is just for misleading towards this Honorable Tribunal which is clear from the payroll of the Petition (Annexure-A).
- 4. Incorrect, hence denied as no adverse action has been taken against the appellant. She remained on the post of SDEO (F) Paharpur by the suspension order of Notification dated 12-01-2022. *In Court*
- 5. Incorrect, hence denied in toto. The real situation has been stated in the above paras. 
- 6. Incorrect, hence denied. The department always acted upon the directions of the Honorable Tribunal in EP No.493/2023 which was implemented in letter & spirit (Annexure-B). Moreover, the Judgment dated 30-9-2022 has been satisfied being implemented & the Petitioner if feel her self-aggrieved from the Notification dated 5-12-2023, she can adopt the proper remedy at proper forum. Therefore the present EP is not maintainable (Annexure-C).
- 7. Incorrect hence denied as the appellant was transferred from the post of SDEO(F) Pharpur D.I.Khan to SDEO(F) Ghazni Khel, Lakki Marwat after completion of her normal tenure as per judgment of the Honorable Tribunal/tenure policy of Provincial Government.
- 8. Incorrect, hence denied this Honorable Tribunal has got no jurisdiction to entertain the matter in issue in the instant EP No.987/2023. The transfer order of the appellant was issued after completion of her normal tenure and as per Section-10 of the Civil Servant Act, 1973 which cannot be challenged in previous Judgment dated 30-9-2022, being satisfied as implemented.

Admitted

ATTESTED

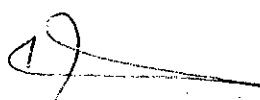
HALID MEHMOOD
Advocate
Stationed at D.I.Khan

- 9. Incorrect hence denied. The report of District Accounts Officer D.I.Khan, containing details of salary of the appellant is attached as (Annexure-A) for kind perusal of the Honorable Tribunal.
- 10. Para-10 is not in issue before the Tribunal and the matter is the domain of PSB answering respondent has no authority with in the matter.
- 11. Incorrect and has already been explained in foregoing Paras.
- 12. Incorrect, the Petitioner if is aggrieved from the order dated 05-12-2023, may approach to the proper forum with new cause of action. Therefore, Execution Petition along with the Grounds is not maintainable & is liable to be dismissed with cost.

GROUND:

- a) Incorrect, hence denied. The Judgment dated 30-9-2022 has been implemented by the respondent department. In this regard, relevant portion of Execution Tribunal is as under:

“In view of the above the execution petition in hand stand filed being implemented. Parties are left to bear their own costs. File be consigned to the record room”.



ATTESTED



KHALID MOHAMMAD
Advocate High Court
Stationed at D.I.Khan

- b) Incorrect and just repetition of words, the Judgment dated 30-9-2022 had the directions to left the Decree Holder for completing her tenure at the previous station at D.I.Khan. It is important to mention here that as per Payroll at Annexure-A, she has completed her tenure in the result of Previous EP No.493/2023 consigned on 24-08-2023.
- c) Incorrect, hence denied. Totally mis-statement & misleading towards this Honorable Tribunal.
- d) Incorrect, hence denied in toto. The entire story is just repetition of facts.
- e) Incorrect, hence denied as replied in Para A, the Judgment has already been implemented.
- f) Incorrect, the present EP is not maintainable, hence liable to be dismissed being already satisfied & consigned previously.
- g) Incorrect, the Petitioner has completed her normal tenure as per direction of this Honorable Tribunal.
- h) Incorrect, hence denied.

i) The Petition is not maintainable & is liable to be dismissed summarily.

Prayer:

In view of the above legal and factual position, it is humbly prayed that since judgment of the Honorable Tribunal was implemented in letter & spirit and the appellant has been transferred after completion of her normal tenure (02) years as per service record already attached as (Annexure-A); hence the instant Execution Petition Application filed by the appellant, being devoid of any merits, may kindly be dismissed with cost.



(MASOOD AHMAD)

**Secretary Elementary & Secondary Education
Department Khyber Pakhtunkhwa
(Respondent No.1)**

ATTESTED



**KHALID MAHMOOD
Advocate High Court
Stations 1 at D.I. Khan**

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.**

Execution Petition No. 963/2023, in Service Appeal No. 137/2022

MST Shamshad Bibi SDEO (Female)
Paharpur E&SE D.I. Khan **Appellant**

VS

Secretary E&SE, Khyber Pakhtunkhwa & others..... **Respondents**

**PARAWISE COMMENTS FOR & ON BEHALF OF THE RESPONDENT
No. 1.**


AFFIDAVIT

I, the undersigned do hereby solemnly affirm and declare that the contents of the accompanying Parawise Reply submitted by the Respondent No.1 is true & correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



(MASOOD AHMAD)
Secretary Elementary & Secondary Education
Department Khyber Pakhtunkhwa
(Respondent No.1)

ATTESTED



KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

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**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.**

Execution Petition No. 963/2023, in Service Appeal No. 137/2022

MST Shamshad Bibi SDEO (Female)
Paharpur E&SE D.I. Khan **Appellant**

VS

Secretary E&SE, Khyber Pakhtunkhwa & others..... **Respondents**

**PARAWISE COMMENTS FOR & ON BEHALF OF THE RESPONDENT
No. 1.**


AUTHORITY LETTER

Qamar Abbas, Section Officer, Elementary & Secondary Education,
Department is hereby authorized to submit Parawise Comments/Reply in the
subject Execution Petition on behalf of Respondents No.1.



(MASOOD AHMAD)
Secretary Elementary & Secondary Education
Department Khyber Pakhtunkhwa
(Respondent No.1)

ATTESTED


KHALID MEHMOOD
Advocate High Court
Stationary D.I. Khan

E.P. No. 963/2023
Shamshad Bibi vs Govt

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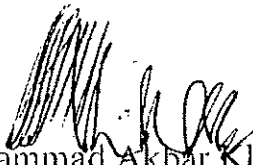
14.02.2024

1. Mr. Aftab Hussain, Advocate Aproxo on behalf of learned counsel for the petitioner present. Mr. Habib Anwar, Additional Advocate General for official respondents present. Learned counsel for private respondent No. 8 also present.

2. Learned Additional Advocate General stated at the bar that the petitioner has already completed her normal tenure of posting and the judgment of this Tribunal dated 30.09.2022 has been implemented, therefore, the execution petition may be filed. Since the judgment of this Tribunal has been complied with, therefore, the instant execution petition is filed.

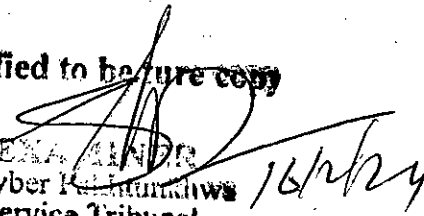
3. Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal on this 14th day of February, 2024.




(Muhammad Akbar Khan)
Member (E)


Kamranullah

Date of Presentation of Application 16/2/2024
Number of Words 17
Copying Fee 5/-
Urgent 5/-
Total 10/-
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Date of Completion of Copy 16/2/2024
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

KHYB AKHTUNKHWA COUNCIL

KHALID MEHMOOD
Advocate
bc-15-5415
Date of Issue: Octob 20
Valid upto: Octo: 2023



Secretary
KP Bar Council

وکالت

کورٹ فیس

بعدالت جناب جسٹریٹون ہوا کہ سہی ٹرینول لیا
 منتخب *Abulhasan*
 نام *گورنٹ KMA دہلی*
 دعویٰ یا جرم *12 (2) case in Ep. 963/2023*
 تفصیل دعویٰ یا جرم *in case SA 137/2022*
 باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیروی وچ ابتدائی برائے پیشی یا تصفیہ مقدمہ مقام کیلئے
حالیہ طور پر

کوسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں ہر پیشی پر خود بذریعہ اختیار خاص رو برو دعوات حاضر ہونا ہوں گا۔ اور ہر وقت ہمارے جانے مقدمہ وکیل صاحب
 موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر مٹھ حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف
 اسکے کسی طرح و ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف مقدمہ مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بعد از حتمیل ہر وی کرنے کے
 ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف مقدمہ مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بعد از حتمیل ہر وی کرنے کے ذمہ دار نہ
 ہوں گے اور مقدمہ مقدمہ پکھری کے علاوہ اور جگہ سامت ہونے یا بعد از حتمیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر مٹھ کو کوئی قصاص پیچھے چوس کے ذمہ
 دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا عطا نہ دہیں کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل سامت پر داخلہ صاحب موصوف حل کردہ
 ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو مرضی دعویٰ، یا جواب دعویٰ یا درخواست اجرائے ڈگری و نظر ثانی اپیل و غرضی اور ہر قسم درخواست پر دخلہ و تصدیق کرنے کا
 بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کسانے اور ہر قسم کا دہیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر پٹائی یا رضی نامہ دینے پر
 حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور صورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ ہرون از پکھری صدر ہر وی مقدمہ مذکورہ نظر ثانی اپیل و غرضی اور ہر قسم کی
 مقدمہ یا مشورتی ڈگری یا طرف یا درخواست حکم انتہائی یا قرقی یا گرفتاری عمل از فیصلہ اجرائے ڈگری بھی صاحب موصوف کو بشرط امانتگی علیحدہ عطا نہ ہر وی کا اختیار ہوگا
 اور تمام سامت پر داخلہ صاحب موصوف حل کردہ ذات خود منظور و قبول ہوگا۔ اور صورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو
 کی کارروائی یا صورت درخواست نظر ثانی اپیل یا غرضی یا دیگر مطالبہ مقدمہ مذکورہ کی دوسرے وکیل یا ہر مٹھ کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے شیر قانون کو
 بھی پر امر میں وہی اور دینے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں جو کچھ ہر جائد الخواہ پڑاگا، وہ صاحب
 موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری ٹیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور انکی
 صورت میں ہر کوئی مطالبہ کسی حکم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند ہے

سورہ 15 اور فروری 2024

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد العبد العبد

Accepted

033364330001

مستند کی

Handwritten signature