

Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 206 /2024

Date of order
by the judge


Order or other proceedings with signature of judge

3

01.03.2024

The implementation petition of Mst. Seema Naz
refiled today by registered post through Mr. Hamayun
Khan Advocate. It is fixed for implementation report
before touring Single at A.Abad on _____.
Original file be requisitioned. AAG has noted the next
date.

By the order of Chairman

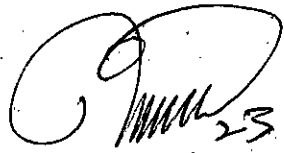

REGISTRAR

The execution petition in appeal no. 312/2022 received today i.e., on 22.02.2024 is returned to the counsel for the petitioner with the following remarks.

1. A 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. Spare copies for respondents are not submitted with the appeal.

No. 408 /S.T,

DT. 23/2 /2024.


23/2/24

REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

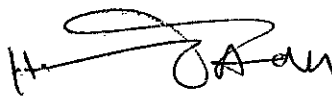
Mr. Hamayun Khan Adv.
High Court, A. Abad.

Respected Sir

1. Application filed by Petitioner for implementation of judgment dated 11-12-2023 attached at page No-17

2. Spare 3 Set of Petition is attached.

Please file title Petition for further proceeding before the court.


28/2/2024

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

E.P No. 206 /2024

IN

Appeal No. 312/2022.

Mst. Seema Naz Ex-PST, daughter of Khuda Dad, wife of Abdul Jabbar,
resident of Sanda Saray Cum Arghashori, Tehsil & District Battagram.

...PETITIONER

VERSUS

Government of Khyber Pakhtunkhwa through Elementary & Secondary
Education, Peshawar and others.

...RESPONDENTS

APPLICATION FOR IMPLEMENTATION

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...PETITIONER

Through

Dated: 20/2/2024.


(HAMAYUN KHAN)

&


(FAZLULLAH KHAN)

Advocates High Court, Abbottabad

①

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Dis. No. 11292

Dated 22-02-2024

E.P No. 206 /2024

IN

Appeal No. 312/2022

Mst. Seema Naz Ex-PST, daughter of Khuda Dad, wife of Abdul Jabbar,
resident of Sanda Saray Cum Arghashori, Tehsil & District Battagram.

...PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female), Battagram.

...RESPONDENTS

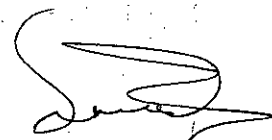
**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 11/12/2023 PASSED BY THIS
HONOURABLE TRIBUNAL IN APPEAL NO.
312/2022 TITLED "MST. SEEMA NAZ V/S GOVT. OF
KHYBER PAKHTUNKHWA & OTHERS".**

Respectfully Sheweth:-

1. That petitioner filed service appeal No. 312/2022 against the impugned order dated 09/10/2021 passed by respondent No. 3. Copy of appeal is attached as Annexure "A".
2. That on 11/12/2023 after hearing of arguments this Honourable tribunal accepted appeal of the appellant and set-aside impugned order dated 09/10/2021. Copy of judgment is attached as annexure "B".
3. That thereafter, petitioner submitted judgment passed by this Honourable court in the office of respondent No. 3 for implementation.
4. That after laps of more than 02 months respondents had not implemented judgment dated 11/12/2023 of this Honourable tribunal till date and refuse implement the same.
5. That respondent No. 3 instead of complying with the direction of this Honourable Tribunal, straightaway refused to comply with the direction of this Honourable Tribunal.

6. That other point would be raised at the time of arguments kind permission of this Honourable Tribunal.

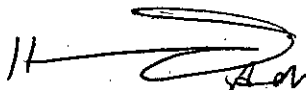
It is therefore, humbly prayed that on acceptance of instant application respondents be kindly be directed forthwith implement the judgment dated 11/12/2023 passed by this Honourable Tribunal in its true letter and spirit



...PETITIONER

Through

Dated: 20/2/2024



(HAMAYUN KHAN)

&



(FAZLULLAH KHAN)

Advocates High Court, Abbottabad

1 ANNEXUR SA 4

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**



Appeal No. 312 /2022

Mst. Saima Naz Ex.PST, daughter of Khuda Dad wife of Abdul Jabbar,
resident of Sanda Saray cum Arghashori, Tehsil & District Battagram.

...APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 380

Dated 04/03/2022

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Female) District Battagram.

...RESPONDENTS

APPEAL UNDER SECTION 4 KPK SERVICE
TRIBUNAL ACT 1974 READ WITH UPDATE
AMENDED AGAINST THE IMPUGNED
NOTIFICATION DATED 09.10.2021 ISSUED BY
RESPONDENT NO. 3, WHEREBY RESPONDENT
NO. 3 IMPOSED MAJOR PENALTY OF REMOVAL
FROM SERVICE UPON APPELLANT WHICH IS
ILLEGAL, AGAINST THE LAW AGAINST THE
FACTS HENCE INEFFECTIVE UPON THE RIGHTS
THE APPELLANT AND LIABLE TO BE SET-ASIDE.

Filed to-day

↓
Registrar

04/03/2022

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

PRAYER:- ON ACCEPTANCE OF THE INSTANT APPEAL, IMPUGNED NOTIFICATION DATED 09.10.2021 ISSUED BY RESPONDENT NO. 3 MAY KINDLY BE DECLARED NULL AND VOID AND APPELLANT BE REINSTATED INTO SERVICE ALONGWITH ALL BACK BENEFITS. ANY OTHER RELIEF WITH THIS HONOURABLE COURT MAY DEEM FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

Respectfully Sheweth;-

The appellant beg to solicit through this service appeal on the following legal and factual grounds;-

1. That appellant hail from District Battagram in year 2011 applied for appointment against the post of PST.
2. That thereafter completion of all codal formalities respondent No. 3 issued appointment order of the appellant as PST Teacher.

ATTESTED


Member (Civil) /
Service Tribunal
Battagram

3. That after joining duty, appellant performed her duty with full devotion, dedication and liabilities and no complaint was ever found against her.
4. That on 09.10.2021, respondent No. 3 issued so-called impugned notification, without any justification and lawful authority on the basis of self-made allegation. Copy of impugned notification dated 09.10.2021 is annexed as Annexure "A".
5. That on 07.11.2021, appellant filed departmental appeal before the respondent No. 2 against the impugned notification dated 09.10.2021, but till dated respondent No. 2 not passed any order and similarly not given any response on the service appeal. Copy of departmental appeal is annexed as Annexure "B". Hence present appeal on the following legal grounds:-

GROUNDS:-

- a. That, the removal from service notification dated 09.10.2021 is illegal, unlawful, without lawful authority, perverse, and

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SERVICE TRIBUNAL
BANGALORE

against the constitutional guaranteed rights of the appellant hence, untenable in the eye of law and his liable to be set-aside.

- b. That when law prescribed something which is to be in a particular. That must be in that manner and not otherwise. Hence the respondents were bound to follow the law which amount to misconduct on the part of respondents. Hence impugned order is liable to be set-aside and appellant be reinstated alongwith all back benefit (as per law) as per law.
- c. That, neither any charge sheet was served upon the appellant nor she was associated with any enquiry hence, the termination/removal notification is based on political influence, therefore liable to be set-aside.
- d. That respondent No. 3 intentionally not delivered impugned notification to the appellant for redressing of her grievance and lastly on 04.11.2021 respondents given the said impugned notification to the appellant

ATTESTED

SECRETARY
Service Tribunal
Bhubaneswar

after many requests which shows the malafide of the respondents.

- e. That, the appellant was condemned unheard and she did not given opportunity for personal hearing to bring the real and true facts on the screen.
- f. That even otherwise the impugned notification dated 09.10.2021 is liable to be set-aside on the grounds that no rights of defence or personal right of hearing which was mandatory provision of law was given to the appellant before being proceeded against her.
- g. That, impugned order was passed against the appellant with malafide, against law as void and without jurisdiction.
- h. That the whole disciplinary proceedings initiated against the appellant have been done in contravention to the rules, regulation and law and therefore the whole proceedings

ATTESTED
[Signature]
CHAIRMAN
Service Tribunal
Bhubaneswar

are liable to be set-aside appellant be reinstated to her original post.

- i. That respondents violated the basic principle of natural justice and rule and procedure prescribed in E&D rules, hence impugned notification is liable to be set-aside.
- j. That respondents issued impugned notification against the well known principles procedures prescribed and guidelines by the superior courts time by time for the governments departments but respondents ignored all these rules and principles.
- k. That the respondents without any reasons on the part of appellant imposed major penalty of removal from service and no opportunity of personal hearing was given to the appellant, and similarly without charge sheet and statement of allegation, hence condemned unheard.

ATTACHED

EX-MINISTER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- l. That the addresses of the parties have been correctly given in the heading of the appeal.
- m. That other points would be argue at the time of argument with the kind permission this Honourable Tribunal.

It is, therefore, humbly prayed that on acceptance of the instant appeal, impugned notification dated 09.10.2021 issued by respondent no. 3 may kindly be declared null and void and appellant be reinstated into service alongwith all back benefits. any other relief with this honourable court may deem fit and proper in the circumstances of the case may also be granted to the appellant.


...APPELLANT

Dated: 1/2 /2022

Through


(HAMAYUN KHAN)

&


(FAZLULLAH KHAN)

Advocates High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

Certified  true copy


...APPELLANT

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of ... 02/01/24

Number of Witnesses 2

Copying Fee 35/-

Agent 3/-

Total 40/-

Name of Supplier _____

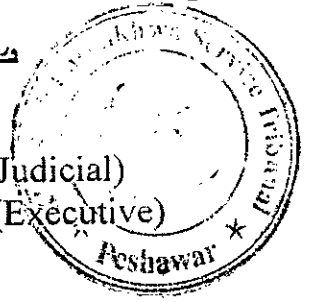
Date of Completion 02/01/24

Date of Delivery of ... 02/01/24

ANNEXURE "B"

11

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT ABBOTTABAD



BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 312/2022

Mst. Saima Naz Ex-PST, D/o Khuda Dad W/o Abdul Jabbar,
R/o Sanda Saray Cum Arghashori, Tehsil & District Battagram.
(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education Peshawar and 02 others. (Respondents)

Present:

Mr. Hamayun Khan, Advocate.....For the appellant
Mr. Habib Anwar, Additional Advocate GeneralFor respondents

Date of presentation of Appeal.....04.03.2022
Date of Hearing.....11.12.2023
Date of Decision.....11.12.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: The appellant has invoked the jurisdiction of this Tribunal by filing the instant appeal with the prayer copied as below:-

"On acceptance of the instant appeal, impugned Notification dated 09.10.2021 issued by respondent No. 3 may kindly be declared null and void and appellant be reinstated into service alongwith all back benefits. Any other relief which this honourable court may deem fit and proper in the circumstances of the case may also be granted to the appellant."

ATTESTED

MEMBER (Executive)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Precise averments raised by the appellant in her appeal are that she was appointed as Primary School Teacher in the year 2011 and was performing her duty with full devotion; that vide Notification dated 09.10.2021, she was removed from service without any justification or lawful Authority, therefore, she preferred departmental

appeal, however the same was not responded within the statutory period, hence the instant appeal.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant contended that whole of the proceeding were conducted at back of the appellant and no charge sheet, statement of allegations or show-cause notice was served upon her. He next contended that the appellant was proceeded against on account of willful absence but the procedure as laid down in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not at all complied with, rendering the impugned order of removal of the appellant from service as wrong and illegal. He further contended that all the proceedings were conducted in a haphazard manner without complying the procedure provided in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He next argued that no opportunity of personal hearing was afforded to the appellant and she was thus condemned unheard. He further argued that the rights of the appellant as guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 were badly violated. In the last he requested that the impugned order may be set-aside and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Additional Advocate General while controverting the arguments advanced by learned counsel for the appellant, contended that the appellant was not performing her duty

ATTESTED
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



regularly and was found absent from duty on so many occasions as reported by IMU. He next contended that show-cause notices were issued to the appellant, however she deliberately avoided to submit reply of the same. He further contended that notice for personal hearing was also issued to the appellant but she failed to appear before the competent Authority. He next argued that previously too, the appellant was found absent from duty on 07.08.2021, 12.07.2021, 08.06.2021, 27.05.2021 as well as 09.04.2021 and was penalized for the same. He further argued that the inquiry proceedings were conducted by complying the procedure as laid down in Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. In the last he requested that the impugned order may be kept intact and the appeal in hand may be dismissed with cost.

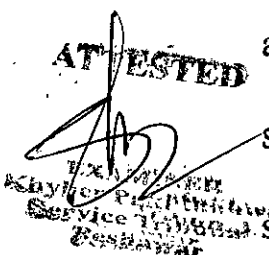
6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. According to the impugned Notification dated 09.10.2021, whereby the appellant has been removed from service, the appellant was held liable for willful absence with effect from 17.03.2021 till the date of her removal from service i.e 09.10.2021.

According to the record annexed by the respondents alongwith their reply, an absence notice as well as a show-cause notice was issued to the appellant on 12.04.2021 by the District Education Officer (F) Battagram. In the absence notice, it has been mentioned that the appellant was found absent from duty with effect from 09.03.2021 and

she had been asked to submit reply within seven days, failing which she would be proceeded under Rule-3 (a), (b), (c), (d) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline)

ATTESTED


 District Education Officer (F)
 Battagram

Rules, 2011. However in the show-cause notice issued to the appellant on the same day, it had been mentioned that she was found absent during the surprise visit on 17.03.2021 and 10.04.2021 and that the competent Authority had tentatively decided to impose major penalty of removal from service upon the appellant under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Instead of any action on the aforementioned show-cause as well as absence notices, the District Education Officer (Female) Battagram issued another absence notice to the appellant on 30.06.2021 wherein it had been mentioned that in case of failure to join her duty within seven days, the appellant will be proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. While going through the show-cause as well as absence notices allegedly issued to the appellant, it can be observed that the District Education Officer (F) Battagram was herself not certain to proceed against the appellant for habitual absence as provided in Rule-3 (d) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 or for willful absence as provided in Rule-9 of the said rules. Ultimately another show-cause notice dated 23.09.2021 was issued to the appellant, the contents of which would show that the appellant had been proceeded against for misconduct as well as habitual absence, while the impugned Notification of removal of the appellant from service dated 09.10.2021 would show that she was proceeded against for willful absence. Another interesting aspect of the case is that on one hand the appellant has been shown to have remained absent from duty with effect from 17.03.2021 till her removal from




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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Battagram

service on 09.10.2021, while on the other hand, it has been mentioned in para-3 of facts of the reply submitted by the respondents that in the intervening period the appellant had remained absent on 09.04.2021, 27.05.2021, 08.06.2021, 12.07.2021 and 07.08.2021 and that she had been previously penalized for the same. In such a scenario, the impugned order of removal of the appellant from service is not sustainable in the eye of law and is liable to be set-aside.

8. In view of the above discussion, the impugned order of removal of the appellant is set-aside and she is reinstated in service with directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of the de-novo inquiry. In case the respondents failed to conduct de-novo inquiry within the period of 60 days mentioned above, the appellant shall be deemed to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.12.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

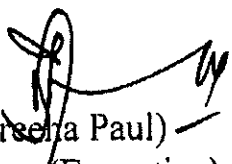
Certified to be true copy
Dhyb.
Services Tribunal
Peshawar

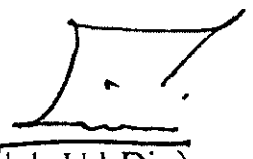
ORDER
11.12.2023

Learned counsel for the appellant present. Mr. Ihsanullah, ADEO alongwith Mr. Habib Anwar, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned order of removal of the appellant is set-aside and she is reinstated in service with directions to the competent Authority to conduct de-novo inquiry in the matter strictly in accordance with the relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to her to defend herself. The issue of back benefits shall be subject to outcome of the de-novo inquiry. In case the respondents failed to conduct de-novo inquiry within the period of 60 days mentioned above, the appellant shall be deemed to have been reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.12.2023


(Farsana Paul)
Member (Executive)
Camp Court Abbottabad


(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad

27 | 1/2023

Handwritten signature

دعوت خیر اور اصلاحی کاموں کے لیے
دعوت خیر اور اصلاحی کاموں کے لیے

Post - 2023

الحاجی

دعوت خیر اور اصلاحی کاموں کے لیے

11/12/23

دعوت خیر اور اصلاحی کاموں کے لیے

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دعوت خیر اور اصلاحی کاموں کے لیے

کورٹ فیس

وکالت نامہ

BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR عدالت

MST SEEMANAZ عنوان: Court of K.P.K

Petitioner منجانب:

Implementation Petition نوعیت مقدمہ:

ATD باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آن مقام

Hamayun Khan, Fazlullah Khan کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا نیز وکیل

صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہوا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت نالاش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

المرقوم: 20/2/24

Accepting

الحمد لله

بمقام: ATD

الحمد لله