


Form A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 200/2024

S.No	Date of order proceedings	Order or other proceedings with signature of judge
1		3
1	29.02.2024	<p>The implementation petition of Mst. Saira submitted today by Mr. Javed Ali Ghani Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Case Title: Mst. Saira CHECK LIST Govt of Peshawar

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?		
3	Whether appeal is within time?		
4	Whether the enactment under which the appeal is filed mentioned?		
5	Whether the enactment under which the appeal is filed is correct?		
6	Whether affidavit is appended?		
7	Whether affidavit is duly attested by competent Oath Commissioner?		
8	Whether appeal/annexures are properly paged?		
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?		
10	Whether annexures are legible?		
11	Whether annexures are attested?		
12	Whether copies of annexures are readable/clear?		
13	Whether copy of appeal is delivered to AG/DAG?		
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?		
15	Whether numbers of referred cases given are correct?		
16	Whether appeal contains cutting/overwriting?		
17	Whether list of books has been provided at the end of the appeal?		
18	Whether case relate to this court?		
19	Whether requisite number of spare copies attached?		
20	Whether complete spare copy is filed in separate file cover?		
21	Whether addresses of parties given are complete?		
22	Whether index filed?		
23	Whether index is correct?		
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Saujeed Ali Rhanvi

Signature:

Dated:

[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Execution petition no. 200/2024

Appeal No. 877/2019

Mst. Saira Appellant

Versus

Govt. of Khyber Pakhtunkhwa through SE&E & others..... Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Implementation application with affidavit.		1-2
2	Attested copy of order/ judgment dated 19.01.2022	A	3-16
3	Copy of notification dated 19.08.2022	B	16
4	Wakalatnama.		17

Petitioner

Through


Javed Ali Ghani

Advocate Supreme Court

&


Hamza Jamshed

Advocate,

Dated: 26.02.2022

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Execution petition no. 200/2024

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 878/2019

Diary No. 11476

Dated 29-2-2024

Mst. Saira d/o Ajmal Khan Ex-ADEO (F) Nowshera
R/o Mirzadher, Tehsil Tangi District Charsadda..... Appellant

Versus

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Civil Secretariat, Peshawar.
- 2) Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3) Khyber Pakhtunkhwa Public Service Commission through Chairman, Fort Road, Peshawar Cantt..... Respondents



Application for implementation of judgment/
order of service tribunal dated 19.01.2022.

Respectfully Sheweth;

- 1) That this Hon'ble Tribunal vide judgment/ order dated 19.01.2022 accepted and the applicant/ petitioner was reinstated with all back benefits. (Attested copy of judgment/ order dated 19.01.2022 is attached as Annexure "A").
- 2) That petitioner approached the concerned authorities for the implementation of judgment/ order dated 19.01.2022, but they partially implemented the above said order to the extent of reinstatement only. (Copy of notification dated 19.08.2022 is Annexure "B").

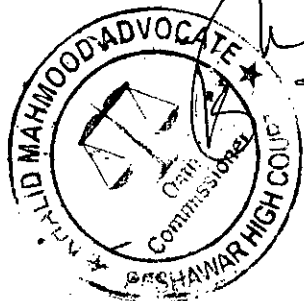
- 3) That respondents are not implementing the order/ judgment dated of this hon'ble Tribunal in toto and have committed clear contempt/ violation of the order of this Hon'ble Court.
- 4) That according to superior courts judgments every organ of the State as well as subordinate courts of the country is bound to implement the judgment and order in its true letter and spirit. So issued by any court of law including this Hon'ble Court.
- 5) That justice demands that judgment of this Hon'ble Tribunal may please be implemented in true letter and spirit and according to the order/ judgment so delivered in toto.

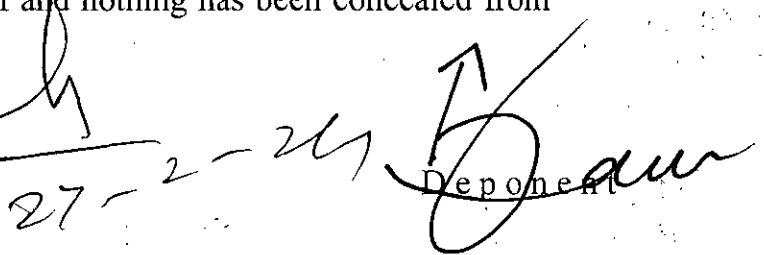
It is, therefore, humbly prayed that respondents may please be directed to implement the order/ judgment dated 19.01.2022 in true letter and spirit and all back benefits be awarded as per order of this Hon'ble Tribunal.

Petitioner
 Through 
Javed Ali Ghani
 Advocate Supreme Court
 & 
Hamza Jamshed
 Advocate,

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.




 27-2-24
 Deponent

Annex "A"

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR**



Service Appeal No. 826/2019

Mst. Sadia Bibi D/o Muhammad Akram Shah, Ex-ADEO (F) Nowshera R/o Chail, Taza Gram P.O Lund Khwar, Tehsil & District Mardan

Appellant

....VERSUS....

Diary No. 889

Dated 24-6-2019

1. Govt of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. District Education Officer (Female), Nowshera.
4. Khyber Pakhtunkhwa Public Service Commission through Chairman, Fort Road, Peshawar Cantt. Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974, READ WITH ALL ENABLING PROVISIONS OF LAW, GOVERNING THE SUBJECT, AGAINST:

NOTIFICATION ENDORSEMENT NO.6712-18/F.NO.A-17/ ASDEOS/SADIA, DATED: 28.02.2019 OF RESPONDENT NO.2, VIDE WHICH APPOINTMENT NOTIFICATION DATED: 02.02.2017 WAS DECLARED NULL & VOID/WITHDRAWN AND OFFICE MEMO NO. 669/ESTAB:/RECOVERY DATED: 18.03.2019 OF RESPONDENT NO.3, VIDE WHICH APPELLANT WAS DIRECTED TO DEPOSIT RS. 7,48,545/- I.E. SALARIES RECEIVED, INTO GOVT TREASURY.

PRAYER-IN-APPEAL:

Filed to-day
Registrar
24/6/19

On Acceptance of Instant Appeal, the Impugned Notification dated 28.02.2019 of respondent No.2 and Memo dated: 18.03.2019 of Respondent No.3, alongwith all subsequent proceedings thereto, may be declared as illegal, Unlawful, without Lawful Authority and of no legal effect, hence be set at naught and appellant may be reinstated in service with all back benefits, in the best interest of justice and equity.

Respectfully Sheweth:

1. That appellant is law abiding peaceful citizen of Khyber Pakhtunkhwa and permanent resident of Tribal District Mohmand. (Copies of CNIC and Domicile Certificate, are attached as Annexure "A" & "B" respectively)
2. That appellant is qualified upto MA and having passed M.Ed and B.Ed degree course alongwith Certificate of Teaching (C.T), needless

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(⚡) (Ⓢ)

to add that ^{she} was serving as Teacher of History and Islamiyat w.e.f. 10.04.2010 to 01.03.2015 in Ghazali School & College District Mardan. (Copies of Educational Testimonials, Professional Degrees/Certificate and Experience Certificate, are attached as Annexure "C", "D" & "E", respectively)

3. That respondent No.4, invited applications for fifteen (15) Vacant Posts of Female ADOs, vide Advertisement No.02/2015, dated: 05.03.2015.
(Copy of Advertisement is attached as Annexure "F")
4. That appellant, being qualified, applied for one of the aforementioned advertised posts of ADOs and gone through the entire process of selection successfully, evident from deficiency letter dated: 30.11.2015 and Interview Call Letter dated: 04.12.2015, eventually she was recommended by the KP PSC to the Govt of KP for the desired appointment vide recommendation dated: 15.12.2016 and was subsequently referred to the Medical Board by respondent No.2, vide office letter dated: 26.01.2017 and was found Medically Fit, evident from Medical Certificate dated: 27.01.2017.
(Copies of Deficiency Letter dated: 30.11.2015, Interview Call letter dated: 04.12.2015, Recommendation dated: 15.12.2016 of KP PSC, Medical Board Letter dated: 26.01.2017 alongwith Medical Certificate dated: 27.01.2017, are attached as Annexure "G", "H", "I" & "J", respectively)
5. That appellant, after completion of all codal/legal formalities, was appointed as ADEO/ASDEO (Female) BPS-16, on regular basis, in the Elementary & Secondary Education Department, Khyber Pakhtunkhwa, vide Notification No. 881-85/A-17/ADEO(F)2015-16/Public Service Commission dated: 02.02.2017.
(Copy of Appointment Notification dated: 02.02.2017 alongwith Charge Report dated: 20.02.2017, is attached as Annexure "K")
6. That appellant was subsequently adjusted against the vacant post of ADEO(F), at the office of the DEO(F) Nowshera, vide office order No.1703-10/DEO(F)NSR/ADEO(F)/Female/Pro:/Dated: 27.02.2017. Needless to add that appointment order of the petitioner was verified on 02.03.2017 and prior to payment of salary, clearance Certificate regarding release of pay was issued on 07.03.2017.
(Copies of Office Order dated: 27.02.2017, letter dated: 02.03.2017 regarding Verification of Appointment Order, Clearance Certificate dated: 07.03.2017 regarding release of Pay and Salary Slip for the month of December 2017, are attached as Annexures "L", "M", "N" & "O", respectively)
7. That appellant was performing duty with zeal, devotion and outmost satisfaction of the superiors, evident from best performance award and USAID certificate of participation, however she has unilaterally been shunt-out from service vide impugned notification dated: 28.02.2019 of respondent No.2 without due process and following the law/rules governing the subject, needless to add that subsequent memo dated: 18.03.2019 was issued by respondent No.3 vide which she was directed to deposit Rs. 74,85,45/- i.e. received salaries, in the Govt Treasury. It is pertinent to mention herein that NAB and Anticorruption Establishment have simultaneously started harassment

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of appellant, which resulted into WP No. 2043-P/2019, which was disposed of vide judgment dated: 16.05.2019 with prior interim relief granted on 09.05.2019 in the following words.

"In the meanwhile petitioner shall not be harassed or called for investigation without Court Permission"

(Copies of Best Performance Award alongwith USAID Certificate, Impugned Notification dated: 28.02.2019, Impugned Memo dated: 18.03.2019 and Order dated: 09.05.2019 alongwith Judgment dated: 16.05.2019 alongwith ancillary documents, are attached as Annexure "P", "Q" "R" & "S", respectively)


8. That appellant preferred departmental appeal to respondent No.2, but directed to approach respondent No.1, resultantly subsequent departmental appeal dated: 28.02.2019 was preferred which was received in the office of respondent No.1 vide Diary No. 12342 dated: 01.03.2019, though the statutory period of 03 months has been elapsed, but the authority did not consider the same, one way or the other.

(Copies of Departmental Appeals dated: 01.03.2019, is attached as Annexure "T")

9. That appellant, being aggrieved of impugned notification dated: 28.02.2019, impugned memo dated: 18.03.2019 and not considering her departmental appeal by respondent No.1, approaches this Hon'ble Tribunal, inter-alia, on the following grounds:

G R O U N D S:

- A. That impugned Notification dated: 28.02.2019 of respondent No.2 alongwith Memo dated: 18.03.2019 of respondent No.3, are against the law and facts available on file, hence, untenable.
- B. That the appellant has neither been treated in accordance with law nor she has been provided equal protection of law, rather she has not been provided fair opportunity to defend herself, as enshrined in Article-10A of the Constitution of Islamic Republic of Pakistan 1973, hence the respondent department acted without jurisdiction.
- C. That neither regular enquiry was conducted into the guilt of the appellant nor she has been served with mandatory Show Cause Notice, hence, condemned unheard, which attracts doctrine of audi-alterem-partem.
- D. That appellant being qualified was appointed after due process of law and fulfilment of all legal/codal formalities, however shunt-out from service with a single stroke of pen, without care and caution of its legal consequences, which has caused grave miscarriage of justice.

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14.01.2022

Appellant present through representative

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Due to non-availability of Mr. Mian Muhammad Member (Executive), the case could not be heard. Adjourned. To come up for arguments on 19.01.2022 before D.B.



(Rozina Rehman)
Member (J)

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ORDER
19.01.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakheil, Assistant Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, we are inclined to accept the instant appeal as well as the connected service appeals. The impugned orders are set aside and the appellants are reinstated in service with all back benefits. Parties are left to bear their own costs, file be consigned to record room.

ANNOUNCED
19.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 826/2019

Date of Institution ... 24.06.2019

Date of Decision ... 19.01.2022



Mst. Sadia Bibi D/ Muhammad Akram Shah,, Ex-ADEO (F) Nowshera R/o Chail,
Taza Gram P.O Lund Khwar, Tehsil & District Mardan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secodary
Education, Civil Secretariat Peshawar. ... (Respondents)

Amin-Ur-Rehman
Advocate

... For Appellant

Muhammad Riaz Khan Paindakheil,
Assistant Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall disposed of the instant service appeal as well as the connected service appeal bearing No. 827/2019 "titled Mst Neelam Versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat Peshawar and two others" and service appeal bearing No. 877/2019 "titled Mst Saira Versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat Peshawar and two others" as common question of law and facts are involved therein.

Brief facts of the case are that upon recommendations dated 15-12-

2016 of Public Service Commission, the appellant was appointed as Assistant

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District Officer (ADO) BPS-16 vide order dated 02-02-2017. During the course of her service, the respondents found that recommendation letter of the Public Service Commission in respect of the appellant was fake, hence, her appointment order dated 02-02-2017 was withdrawn vide order dated 28-02-2019 with direction to District Education Officer concerned to recover the salaries and other allied benefits drawn by the appellant during the period. Vide letter dated 18-03-2019, the appellant was asked to deposit an amount of rupees 7, 48,545.00/ into Government Treasury. To this effect, two inquiries were under process against the appellant simultaneously by National Accountability Bureau (NAB) as well as Anti-corruption Establishment (ACE). Feeling aggrieved, the appellant filed writ petition No 2043-P/2019 against two inquiries on the same charges, which was disposed of vide judgment dated 16-05-2019 on the terms that the respondents has already confined its inquiry to one forum, hence the instant writ petition has served its purpose. As an interim relief, the respondents were directed that petitioner shall not be harassed or called for investigation without court permission. The appellant filed department appeal dated 01-03-2019, which was not responded within the statutory period, hence the instant appeal with prayers that the impugned orders dated 28-02-2019 and 18-03-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as the appellant was not afforded appropriate opportunity to defend her cause as enshrined in Article-10(A) of the Constitution; hence the respondents acted without jurisdiction; that it is well settled law that regular inquiry is must before imposition of major penalty of removal from service, which however was not done in case of the appellant;

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CHIEF EXAMINER
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that no charge sheet/statement of allegation, nor any show cause was served upon the appellant and the appellant was condemned unheard; that the appellant being qualified was selected after due process of law and fulfillment of all codal formalities, despite the appellant was thrown out of service with a single stroke of pen, which has caused grave miscarriage of justice; that the charges of document being fake was vague, unspecific and did not show any lapse on part of the employee or commission of any fraud by her, therefore the appellant could not be made to suffer for whimsical and mechanical acts of the authorities. Reliance was placed on 2011 SCMR 1581, 2016 SCMR 1299 and 2010 PLD SC 483.

04. Learned Assistant Advocate General for the respondents has contend that the appellant could not produce any cogent proof and legal justification in support of her stand regarding her recommendations by the public service commission and it was found that the recommendation letter by the public service commission was fake; that the appellant could not prove that she has been recommended by public service commission, therefore her claim regarding her appearance before medical board and her service rendered makes no legal ground; that due to the above reason, services of the appellant has been disowned by the respondents after due process of law alongwith the recovery of Rs. 7,48,545/ on account of salaries received by her; that appeal of the appellant is baseless and without any cogent proof and justification, therefore is liable to be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that public service commission vide advertisement No 2/2015 dated 05-03-2015, advertised 15 posts of Female ADO. The appellant equipped with qualification of MA/ M.Ed/ B.Ed/ CT and already serving as a teacher had applied for the post. Placed on record is letter dated 30-11-2015

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of Public Service Commission addressed to the appellant, stating therein that your application for the subject post is incomplete and please make up the following deficiencies within three days, which would suggest that the appellant had applied for the subject post. Still another letter dated 04-12-2015 by public service commission addressed to the appellant would show that the appellant has been called for interview, which also strengthen contention of the appellant that the appellant has properly applied against the post, hence was recommended by the commission vide letter dated 15-12-2016. Upon receipt of recommendation of the commission, the Directorate of Education referred the appellant to DG Health Services for constitution of medical board vide order dated 26-01-2017 and accordingly, the appellant was granted medical fitness certificate by the medical board on 27-01-2017. Services of the appellant were placed at the disposal of DEO (Female) Nowshera for further posting against the vacant post of ADEO/ASDEO vide order dated 02-02-2017. In pursuance of the order, the appellant assumed the charge on 20-02-2017 and started performing her duty. After assuming duty, the process of verification of her document started. The directorate of education verified that appointment order dated 02-02-2017 in respect of the appellant has been checked with office record and was found correct. Letter dated 07-03-2017 of district education officer Nowshera would show that educational and professional certificates/degrees/DMCs have been verified from the concerned Board/universities and were found correct. After verification of antecedents of the appellant, salary of the appellant was activated in the district account office Nowshera and the appellant served for almost two years, until her appointment order was withdrawn vide order date 28-02-2019.

Placed on record are documents which would suggest that NAB as well

as ACE simultaneously started investigation against the appellant, but upon

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intervention of High Court in Writ Petition No 2043-P/2019, vide judgment dated 16-05-2019 the respondents were refrained not to harass or call the appellant for investigation without court permission. Record is silent as to what happened to such case, but the respondents without any inquiry and without taking any legal course, had withdrawn appointment order dated 02-02-2017 in respect of the appellant vide order dated 28-02-2019 under the pretext that her recommendation letter from public service commission was fake.

08. Since no inquiry was conducted either by education department or by public service commission and upon query of this tribunal, the respondent could not ascertain as to what was the source, which had pointed out that recommendation in respect of the appellant were fake, rather we were informed that it was due to rumors in the department that some individual entered the system illegally and upon verification, it was found that documents of the appellant as well as other were fake. Due to incomplete information and absence of inquiry, we are confined to the available record to evaluate the stance of the respondents with respect to their claim. We have observed that the appellant was equipped with the prescribed qualification as well as experience required for the post of ADO. Sufficient material is available on record to show that the appellant had applied for the subject post. The process of advertisement of the post until final selection and her posting against the post is in order and in a sequence, which took almost two years fulfilling all the codal formalities and the appellant served against the post for two years performing her duty to the entire satisfaction of her superior, which is evident from the commendation certificates awarded to the appellant. As per practice in vogue, the respondents placed requisition for recommendation of 15 posts of ADO (Female), whereas the commission recommended candidates, which does not exceed the requisite number. It is un-believable

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W. M. ANWER
 Member
 Service Tribunal
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that a lengthy process of selection spreading over two years of time and culminating into selection of the appellant being female would be maneuvered by her illegally. Antecedents of the appellant had gone through the process of verification and everything was clear during her initial appointment, which is evident from record of the respondents, which is un-disputed and not fake. Appointment order of the appellant was issued by the competent authority, which also is not disputed. Similarly, her medical fitness, preparation of service book, her posting against a post by District Education Officer and her salary are also not fake and are un-disputed. The appellant has served against the post for quite longer and has developed vested right over the post, but was relieved of her duty overnight without observing the legal formalities under the pretext that her recommendation letter was fake. It however was the statutory duty of the appointing authority to check and re-check the appointment procedure, which however was done in case of the appellant well before time, but later in time, the respondents denied its own acts and to this effect, the Supreme Court of Pakistan in its judgment reported as 1996 SCMR 1350 have 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, petitioner 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 place on 2017 PLC (CS) 585. It is also thought

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provoking that even if we assume that the appellant entered the system by a fake order, then how it would be possible without assistance of either Public Service Commission or the Education Department and it is more alarming that the respondents neither initiated any inquiry against Public Service Commission nor against Education Department and simply removed the appellant from service on the charge, which was not proved through a regular inquiry. Record would suggest that during the two years tenure of her service, the appellant performed well and no complaint whatsoever, was filed against her, rather she was awarded commendation certificates. To this effect, the supreme court of Pakistan in its judgment reported as 2011 SCMR 1581 have held that the charges of appointment order being fake was vague, nonspecific and did not show any lapse on part of the employee or commission of any fraud by him/her or non-possessing of requisite qualification by him or his appointment to be made by an incompetent officer.... Department had not found performance of employee to be un-satisfactory..... impugned order was set aside in circumstances. The august Supreme Court of Pakistan in its judgment reported as 2004 SCMR 303 has held that appointment of civil servant was made by competent authority. If prescribed procedure was not followed by the concerned authority, the civil servant could not be blamed for what was to be performed and done by the competent authority. Supreme court noted it with concern that in case the civil servant was to be removed then the same would amount to hitting hard creating problems for the society at large considering each of the civil servants being the bread earner of his/her family. Appointing authority had been acting mechanically without application of mind; therefore, the civil servant could not be made to suffer for whimsical and mechanical acts of the authorities."

09. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the

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appellant, no such inquiry was conducted. The august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of Audi Alterm Partem was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

10. We are of the considered opinion that the appellant has not been treated in accordance with law and was illegally kept away from performance of her duty in whimsical and mechanical way, which however is not allowable under the law.

11. In a situation, we are inclined to accept the instant appeal as well as the connected service appeals. The impugned orders are set aside and the appellants are re-instated in service with all back benefits. Parties are left to bear their own costs, file be consigned to record room.


ANNOUNCED

19.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

Date of Presentation of Application 27-2-24
Number of ~~Words~~ pages = 11
Copying Fee 55/-
Urgent 5/-
Total 60/-
Name of Copyist _____
Date of Completion of Copy 27-2-24
Date of Delivery 27-2-24

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Amir B

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**

DEPARTMENT

NOTIFICATION

1. Whereas, the appellant namely Mst: Saira District Charsadda got inducted herself as ASDEO (BPS-16) in E&SE Department Khyber Pakhtunkhwa vide fake & forged Notification bearing Endst: No. 881-85/A-17/ADEO(F)2015-16/Public Service Commission dated 02/02/2017 & as a result thereof, the services of the appellant were disowned/withdrawn vide Notification bearing Endst: No. 6712-18/F.No.A-17/ASDEOs/Sadja dated 28/02/2019, issued by the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar after following due process of law & rules in vogue.
2. And whereas, feeling aggrieved, the appellant invoked the constitutional jurisdiction under article-212 of the Islamic Republic of Pakistan, 1973 through filing Service Appeal No. 877/2019 before the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar, whereby, the appellant impugned Notification dated 28-02-2019 before the Honorable Court which has been allowed/accepted vide consolidated judgement dated 19/01/2022.
3. And whereas, the Respondent Department has filed CPLA against the consolidated judgment dated 19-01-2022 before the august Supreme Court of Pakistan along with an application under Section-12 (2) CPC 1908 against the judgment ibid before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar for review/setting aside the judgment dated 19-01-2022 on the grounds of misrepresentation & concealment of material facts from the Honorable Court & both are pending adjudication before the Courts of Law.
4. And whereas, the appellant has now filed an Execution Petition No. 254/2022 before the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar for implementation of the judgment dated 19-01-2022. On the last date of hearing fixed on 05-07-2022, the Honorable Court has directed the Respondent Department regarding submission of compliance report into the matter.

Now therefore, in pursuance of the consolidated judgment dated 19-01-2022 of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar, the undersigned, being a competent authority, is pleased to set aside the Notification bearing Endst: No. 6712-18/F.No. A-17/ASDEOs/Sadja dated 28/02/2019 of this Directorate, conditionally till the decision of august Supreme Court of Pakistan in pending CPLA against the judgment dated 19-01-2022. Moreover, Mst: Saira (MC) is hereby adjusted against the post of ASDEO (BPS-16) Circle Barawal Banda District Dir Upper with immediate effect in the interest of public service.

(Hafiz Dr. Muhammad Ibrahim)

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

Endst: No: 413-21 /File No. Lit-II/877/19/Notification Dated Peshawar the 19/1/2022

Copy forwarded for information & n/action to the:-




1. Learned Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. Learned AAG, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. PS to Additional Secretary (O) E&SE Department Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (Female) Dir Upper.
5. District Account Officer Dir Upper.
6. Section Officer (Lit-II) E&SE Department Khyber Pakhtunkhwa Peshawar.
7. Deputy Director (Legal) E&SE Khyber Pakhtunkhwa Peshawar.
8. PA to Director E&SE KP Peshawar
9. ✓ Officer concerned.
10. Master file.

All set to be true

Deputy Director (Estab-F)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

18/1/2022

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قیمت 50	2933	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: بار کونسل ایسوسی ایشن نمبر: BL-22-S111 رابطہ نمبر:	PESHAWAR BAR ASSOCIATION	  

بعدالت جناب: میسٹر کنجو اسروس سروسز سوشل میٹیاور

Petitioner	منجانب:	دعویٰ:
Mst Saira		علت نمبر:
بنام		مورخہ:
Govt of KP through SE&E		جرم:
		تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
آن مقام شملہ کیلئے جادو بر علی نمبر ASC، گمرہ شمشاد کو وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقریر تالنت و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل لکرائی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے جانشین کے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سانشہ پر داخست منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانبہ التوا کے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے
المرقوم: 27/02/2023

العبد العبد العبد
مقام پشاور کے لئے منظور ہے۔