BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 53/2024

IN

SERVICE APPEAL NO. 1227/2020

Muhammad Hussain.....Petitioner

VERSUS

Chief Secretary Khyber Pakhtunkhwa & others.....**Respondents.**

INDEX

Sr. No.	Description of Documents	Annex	Pages
1.	Para-wise Comments		2-4
2.	Affidavit		5
3.	Authority letter		6

Section Officer (Litigition)
Government of KP
Establishment Department

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REPLY ON BEHALF OF RESPONDENTS NO. 1, 2 & 3

RESPECTFULLY SHEWETH,

Preliminary Objections:

1. That the petitioner was not a party in the Service Appeal No. 1227/2020 and has different ground/merits and grievances, therefore, cannot claim execution of the order/judgment of the Hon'ble Service Tribunal, KP in the instant case, hence his petition may be dismissed in limini.
2. That the Petitioner has got no cause of action to institute the instant Execution Petition.
3. That the Petitioner has not come to this Hon'ble Court with clean hands.
4. That the Petition is not maintainable in the present form.
5. That the petitioner is estopped by his own conduct to file the instant Execution Petition.
6. That the Execution Petition has been filed with mala fide intention.

FACTS & GROUNDS:

1. Pertains to record
2. **Incorrect.** The employees of FATA Secretariat were placed in the surplus pool for their expeditious adjustment in consequence to the 25th amendment in the constitution of Pakistan for merger of FATA with Khyber Pakhtunkhwa. As a result of the merger of FATA, its secretariat became redundant and so did its employees as the province of Khyber Pakhtunkhwa already had a dedicated Secretariat consisting of a sizable number of employees with terms and conditions different than that of employees of erstwhile FATA Secretariat.

3. **Correct.** The petitioner was adjusted in accordance with the existing Provincial Surplus Pool Policy, 2001 and its legislative intent.
4. **Correct** to the extent that the said appeal had been filed and the appellants have been adjusted in the secretariat in light of its judgement.
5. **Correct.** However, as every case has its own merits/ grounds and the petitioner was not a party in the Service Appeal No.1227/2020, therefore, he cannot claim the benefit of the Order/Judgement of the Hon'ble Service Tribunal, Khyber Pakhtunkhwa, without having legal deliberations on the matter. Moreover, as the instant petitioner was not a party in the Service Appeal No.1227/2020, which had its own merits/grounds therefore, he cannot claim the execution of the order/judgment in the said service as it is not applicable on the appellant. Reliance is placed on the judgment of apex court in 2010 PLC (C.S) 924(b) which held that "**every case is to be decided on its own peculiar circumstances and fact**". Besides, it is not the right of the appellant/petitioner to ask for absorption in Establishment Department. The Establishment Department has its own employees and the appellant is trying backdoor entry in Establishment Department which may violate rights of employees of Establishment Department and can lead to litigation against the department by its own employees and can also open a Pandora box for Establishment Department by paving the way for illegal absorption of 4000 project employees of Departments of ex-FATA Secretariat on the strength of Establishment Department and would also increase the burden of unnecessary litigation on the Hon'ble Service Tribunal.
6. Correct to the extent that Service Appeal No. 1227/2020 alongwith other 10 connected Service Appeals were adjusted as per directions of the Hon'ble Tribunal vide Judgment dated 14-01-2022.
7. As explained in detail in para-5.

11. Irrelevant to cite in this particular case.
12. **Correct.** However, the petitioner was not a party in the Service Appeal No. 1227/2020 and he has different grounds/merits and grievances, therefore, cannot claim execution of the order/judgment of the Hon'ble Service Tribunal, Khyber Pakhtunkhwa in the instant case.
13. **Correct** to the extent that the petitioner had approached to the Establishment and Administration Department for implementation of the Order/Judgment of the Service Tribunal, Khyber Pakhtunkhwa announced in service appeal No. 1227/2020, dated 14.01.2022. The present petitioner had no relevancy with above mentioned Order/Judgment of the Service Tribunal, Khyber Pakhtunkhwa, even though the representation/request of the present petitioner had been thoroughly examined at Establishment Department and keeping in view of the all facts/findings, the Competent Authority regretted the request of the petitioner purely on merit, being not relevant,

baseless and not implementable on the present petitioner in light of the Order / Judgment of the Service Tribunal, Khyber Pakhtunkhwa.

14. No comments.

Prayer:

In view of the above submissions, it is humbly prayed that the instant service appeal is not maintainable and devoid of any merit, therefore, may graciously be dismissed in limini with cost.

for **(NADEEM ASLAM CHAUDHARY)**
Chief Secretary,
KHYBER PAKHTUNKHWA.
Through,
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 01)

for **(SHAHIDULLAH KHAN)**
SECRETARY,
ESTABLISHMENT DEPARTMENT,
Through
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 02)

(AMER SULTAN TAREEN)
SECRETARY,
FINANCE DEPARTMENT
(Respondent No. 03)

5

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AFFIDAVIT

I, Mr. Shahid Ullah, Secretary Establishment Department (BS-20), respondent, do hereby solemnly declare that contents of the Reply in the Execution Petition are correct to the best of my knowledge and record and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this Execution Petition, the answering Respondent has neither been placed ex-parte nor their defense/struck up.

DEPONENT

CNIC No. 11101-1464320-1
Contact No. 0333.9744944
Shahid Ullah

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

04 MAR 2024

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

AUTHORITY LETTER

Mr. Khaliq Ur Rehman, Superintendent (BPS-17), Litigation-II Section, Judicial Wing, Establishment Department, is hereby authorized to submit Reply, in the Hon'able Services Tribunal, in Execution Petition No. 53/2023 in S.A No. 1227/2020 Titled "Muhammad Hussain VS Govt. of Khyber Pakhtunkhwa & Others" on behalf of the undersigned.

(NADEEM ASLAM CHAUDHARY)
Chief Secretary,
KHYBER PAKHTUNKHWA.
Through,
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 01)

(SHAHIDULLAH KHAN)
SECRETARY,
ESTABLISHMENT DEPARTMENT,
Through
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 02)

(AMER SULTAN TAREEN)
SECRETARY,
FINANCE DEPARTMENT
(Respondent No. 03)