

13.05.2016

Counsel for the petitioner and Mr. Kifayatullah, AXEN alongwith Mr. Kabirullah Khan Khattak, Assistant AG for respondents present. Representative of respondent-department submitted copy of office order dated 27.04.2016 according to which the petitioner has been reinstated in service and period remained out of service was treated as leave without pay.

In view of the above, the judgment of this Tribunal stood implemented and execution petition is disposed off accordingly. File be consigned to the record room.

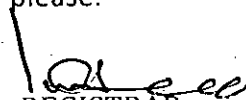


13.05.2016
Member

ANNOUNCED
13.05.2016

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 31 /2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26.02.2016	<p>The Execution Petition submitted by Mr. Mushtaq Khan through Mr. M. Zaffar Tahirkheli Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	29-2-2016	<p>This Execution Petition be put up before S. Bench on <u>03-03-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	03.03.2016	<p>None present for petitioner. Notice to parties be issued for 13.5.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

OFFICE OF THE EXECUTIVE ENGINEER PUBLIC HEALTH ENGG. DIVISION
HANGU

No. 11-16 /E-06

Dated: 27 / 04/2016


OFFICE ORDER:-

In compliance with Khyber Pakhtunkhwa Service Tribunal Judgment dated: 11/08/2015 in service appeal No. 1122/2012 in respect of Mr, Mushtaq Khan Chowkidar on WSS: Shamshah Din Banda, the official concerned is hereby reinstated in service with effect from 11/08/2015.

The period he remained out of service i.e 01/06/2012 to 10/08/2015 is treated as leave as under.

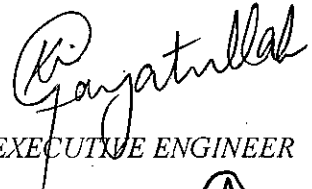
01/06/2012 to 31/10/2012 0-Year 5-Months granted leave on half pay.

01/11/2012 to 10/08/2015 2-Years 9-Months 10-Days granted leave without pay.


EXECUTIVE ENGINEER

Copy to:-

1. The Chief Engineer(South) Public health Engineering Department KPK Peshawar w/r letter No.05/G-4-A/ST/PHE Dated:11/04/2016 for information please.
2. The Section Officer (LIT) Public Health Engineering Department KPK Peshawar for information please.
3. The Registrar KPK Service Tribunal Peshawar for information please.
4. The District Accounts Officer Hangu for information please.
5. The Superintending Engineer PHE Circle information please.
6. The Official concerned for information and with direction to join his duty.


EXECUTIVE ENGINEER



Court Fee		Value
E.P No. 31/2016		

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

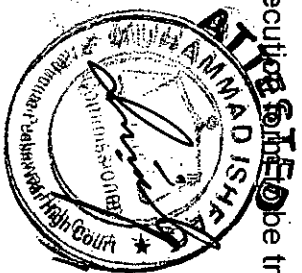
I, the Decree Holder, under Ord 21, Rule 1, CPC 1918, submits this application for the execution of following decree.

1	Case No.	1122/ 2012
2	Names of Parties	Mushtaq Khan Versus Chief Engineer, Public Health Engineering Department
3	Date of Decree	11-08-2015
4	Whether appeal was filed or not?	NIL
5	Whether any payment or compromise was effected or not?	NIL
6	Whether any prior application was filed or not?	NIL
7	Original decree or interest or cost granted with decree	The appellatant reinstated in service. The period remained out of service is treated as leave of kind due.
8	Cost imposed	NIL
9	Detail of judgment debtor	Chief Engineer, Public Health Engineering Department etc (as per detail of accompanying implementation petition.
10	Mode of execution	Directing the respondent department issue reinstatement order of the petitioner

(Respectfully Sheweth)

Verification:

I verify the contents of the executing decree to be true and correct.



Decree Holder,

Peshawar dated: 15 / Feb, 2016

(Signature)
Adv. H. E.

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Petition No. 31 / 2016
in
Service Appeal No. 1122 / 2012

Mushtaq Khans/o Khail Man Shah,
r/o Salay Tehsil & District Hangu

services Tribunal
Diary No. 149
dated 26-2-16

.....Petitioner

VERSUS

1. Chief Engineer, Public Health Engineering Department
Khyber Pakhtunkhwa Peshawar.
2. Superintending Engineer, Public Health Engineering Department,
Kohat Circle Kohat.
3. The Executive Engineer, , Public Health Engineering Department
District Hangu.
4. Secretary, Public Health Engineering Department
Khyber Pakhtunkhwa Peshawar

Respondents

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PETITION FOR IMPLIMENTATION OF DECISION DATED 11-08-2015

=====

Respectfully Sheweth

1. The petitioner had filed a service appeal 1122 / 2012 before this Hon'ble Tribunal, which was accepted vide a judgment of this Hon'ble tribunal dated 11-08-2015 (**copy annexed**)
2. The Hon'ble Tribunal while accepting the appeal has reinstated the appellant in service vide judgment and order dated 11-08-2015.
3. That almost 6 months have passed after the judgment and order of the Hon'ble Tribunal, but so far no action has been taken by the respondent department.

It is, therefore, most humbly requested that by accepting this petition the Respondent Department may be directed to implement the decision of this Hon'ble Tribunal dated 11-08-2015 in its true letter and spirit.

انسان خان
Petitioner,

Through,

Peshawar, dated
15 /Feb, 2015

(MUHAMMAD ZAFAR TAHIRKHELI)
Advocate

(Ansar Ullah Khan)
Advocate

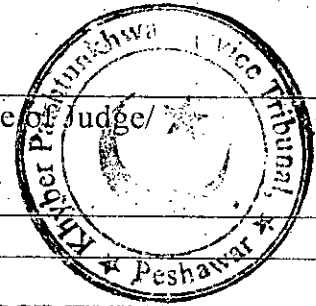
Affidavit

I, the petitioner, stated on Oath that contents of the above petition are true and correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.

مشاق خان
DEPONENT

ATTESTED
MUHAMMAD ISHFAQ
Commissioner
Advocate Peshawar High Court

16/12/16

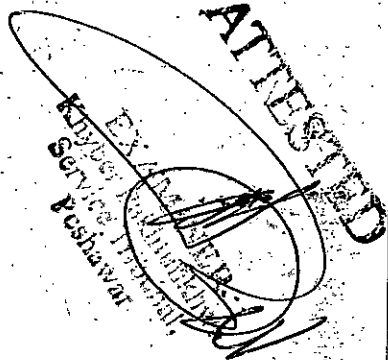


Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	11.08.2015	<p style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p style="text-align: center;">Service Appeal No. 1122/2012</p> <p>Mushtaq Khan Versus Chief Engineer, Public Health Engg. Department, Khyber Pakhtunkhwa Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>ABDUL LATIF. MEMBER.-</u> Appellant with counsel (Mr. Muhammad Zafar Tahirkheli, Advocate) and Government Pleader (Mr. Muhammad Jan) with Kifayatullah, XEN for the respondents present.</p> <p>2. The present appeal has been instituted by Mr. Mushtaq Khan, Ex-Chowkidar, PHE District Hangu, wherein he impugned the order of Superintending Engineer, Kohat Circle dated 12.06.2012 whereby the post of Chowkidar was directed to be re-advertised and salaries of the appellant were stopped. The appellant prayed that the act of respondents may be declared illegal, unlawful, without lawful authority and consequently the appellant may be reinstated to his post with all back benefits.</p> <p>3. The facts giving rise to the instant appeal are that applications were invited vide advertisement in Daily Mashriq dated 27.08.2010 for appointment against different posts including the post of Chowkidar on regular basis as there was no mention of contract appointment. Appellant was appointed</p>

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

as Chowkidar BPS-1 vide order dated 20.10.2010 on the basis of interview conducted by the Departmental Selection Committee. Medical fitness of the appellant was done whereafter appellant served as chowkidar upto June, 2012 for one years and seven months. Thereafter his salaries were stopped and he was informed that being contract employee the period of one year contract stand expired. That Superintending Engineer Kohat circle vide letter dated. 12.06.2012 directed XEN, Hangu for re-advertisement of the post. Appellant approached the departmental authority but the same was not decided as yet. The appellant also approached hon'ble Peshawar High Court vide Writ Petition No. 1990/2012 which was disposed of by hon'ble Peshawar High Court on 10.07.2012 who observed that the petitioner may seek remedy before the Service Tribunal.



4. The learned counsel for the appellant argued that impugned order is based on malafide, ulterior motive and against natural justice. That service of the appellant was terminated without any lawful excuse without any show cause notice and without conducting any enquiry as to the conduct of the appellant. That appellant was a class-IV employee who was appointed against the said post after due observance of all codal formalities. That calling application for the said posts and relieving the appellant, stopping his salaries without legal justification tentamounts to discrimination against the appellant and is against the principle of natural justice as

enshrined in the Constitution of Islamic Republic of Pakistan, 1973. That order of appointment and drawing salaries there-against for one and a half years created valuable rights in favour of the appellant therefore, under the rule of locus poenitentiae the appointing authority could not remove the appellant, particularly when the post still exists. That no reason for removal of the appellant had been given and no regular order regarding termination of services of the appellant was issued nor communicated to the appellant, therefore, the act of the respondents was illegal, void ab-initio and against the prescribed rules. He prayed that on acceptance of this appeal, the appellant may be reinstated in service with all back benefits. He relied on 1997-SCMR-1552, 2000-SCMR-826 and 2011-PLC-351.

5. The learned Government Pleader argued that appellant was appointed for one year on contract basis which was extendable if the department needed his services. Moreover, appointment of the appellant amongst others was not made in the prescribed manner, hence his removal was according to law and rules. He also contended that there was no impugned order which could be assailed by the appellant and which was required to be set aside, varied or modified by the Tribunal, hence the appeal is not maintainable in its present form and may be dismissed.

6. Arguments heard and case file perused with the assistance of the learned counsels for the parties.

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Service Tribunal
Peshawar



7. From perusal of the record, it transpired that appellant was appointed as Chowkidar BPS-1 after the post was duly advertised and due process of rules such as Departmental Selection Committee was held and offer of appointment was issued by the competent authority. There was no mention of contract employment in the advertisement of Daily Mashriq dated 27.08.2010 though the offer of appointment contain the term "contract" for one year extendable if the department needed his services. The appellant was medically examined and allowed to take charge of the post. He served on the post for one and a half years and got salaries in the Basic Pay Scale-01. A perusal of the Pay Roll of the appellant would reveal that there was no mention of contract. Proper personal number was allotted to the appellant, all allowances as admissible to regular civil servants of such category were allowed to the appellant and even deductions of monthly contributions toward C.P.Fund were effected from his monthly salaries which is usually not done in case of short term contract employees or project employees. A perusal of the Pay Roll for the month of May, 2012 would reveal that C.P.Fund subscriptions on account of monthly deductions @Rs. 312 per month stood at Rs, 11058/- at the end of May, 2012. The employment of the appellant was thus in conformity with the then contract policy of the provincial government enforced in the year, 2001 which prescribed appointments on contract against all civil posts in

ATTESTED

Khayber
Peshawar

all departments except judiciary, police and prisons Departments and wherein scheme of C.P.Fund was introduced in lieu of pension and gratuity. The offer of appointment of the appellant clearly stipulated the admissibility of C.P.Fund in lieu of pension/gratuity, hence indicative of the regular contract against a civil/regular post. The re-advertisement of the post by the department also confirmed the availability of regular post which by itself negates the making of short term contract with the appellant as argued by the department. The argument of department further gets rebutted from the letter of XEN, PHE, Hangu dated 12.4.12 addressed to Superintending Engineer PHE Circle Kohat wherein the said officer suggested to the Superintending Engineer to extend/convert the services of the appellant from the expiry date into regular contract in light of Finance Department Government of Khyber Pakhtunkhwa Notification No. 6 (E&AD)1-13/2005, dated 10.8.2005 to avoid further complications as well as from violation of government orders. A copy of the said letter is reproduced as under:-

“It is submitted for your kind information that 27 Nos. office/operational class-IV staff have been appointed during 10 & 11/2010 on contract basis for the period of one year instead of regular contract. Now the period of one year has been expired from the date noted against each.

Therefore, it is requested to may kindly extend/converted their services from expiry date into contract regular in light of Govt. Finance Department. Notification No. 6(E&AD)1-13/2005 dated 10.08.2005 (photo copy attached). As this office to avoid further complications as well as from violation of Govt. Order please.”

ATTESTED

Khyber Pakhtunkhwa
Services of
Peshawar

8. Perusal of the above record leads the Tribunal to believe that the present appellant and appellant Imran Khan in the connected appeal No. 1123/2012 which carried identical case, were appointed against regular posts in the prescribed manner and the respondent department was not justified in dispensing with their services nor was the act of stoppage of their salaries and re-advertisement of their posts lawful.

9 In view of the above, the appeal in hand and the connected Service Appeal No. 1123/2012, titled "Imran Khan Versus Chief Engineer, Public Health Engineering Department Khyber Pakhtunkhwa, Peshawar etc." are therefore, accepted. The appellants are reinstated in service. The period they remained out of service is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
11.8.2015.

Sd/- Abdul Rafeq,
Sd/- P. B. Baksh, Member
Member

Certified to be true copy

ES/AN/11/2015
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

Date of Presentation of Application 27-8-2015
 Number of Words 2400
 Copying Fee 14
 Urgent 2
 Total 16
 Name of Copy [Signature]
 Date of Completion of Work 27-8-2015
 Date of Delivery of Copy 27-8-2015

VAKALATNAMA

In the Court of Service Tribunal, K.P.K
Peshawar

No. _____ of 2016

Petitioner
Plaintiff
Applicant
Appellant
Complainant
Decree-Holder

Mushtaq Khan

VERSUS

Respondent
Defendant
Opponent
Accused
Judgment-Debtor

Chief Exec. etc

I / We Mushtaq Khan the above
noted Petitioner

do hereby appointed and constitute,
Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court, to appear, plead, act,
compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter,
without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel
would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded
in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or
deposited on my / our account in the above noted matter.

مشفاق خان
Client

Dated 15/2/16

Office **ATIQ LAW ASSOCIATES,**
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt. Phone: 091-5279529
E-mail : zafark.advocate@gmail.com

مشفاق خان
Attested & Accepted (Advocates)

fat
Adv. H.C

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