

Misc. Application No. 474/2018

In appeal No. 681/2016

11.04.2019 Appellant Nasrullah in person and Addl. AG on behalf of Director, Elementary & Secondary Education present.

An application has been submitted by Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar with the prayer for correction of typographical error occurring in para-5 of the judgment dated 29.11.2018 handed down by this Tribunal in Appeal No. 681/2016. It is noted in the application that the appellant is entitled for grant of salary w.e.f. 01.09.2004 to 14.03.2005, however, the later date has been erroneously mentioned as 14.03.2015.

The application for correction appears to be well-founded as the prayer of appellant also pertains to the payment of salary from 01.09.2004 till 14.03.2005. It is, therefore, allowed and the date mentioned as 14.03.2015 in the second last line of Paragraph No. 5 of the judgment shall be read as "14.03.2005". Further in the second line of first paragraph of the judgment the date noted as "01.09.2005" shall be read as "01.09.2004".

File be consigned to the record room.


Chairman

28.01.2019

6/3/2019
Khan

None present on behalf of the applicant. Mr. Kabirullah Khattak, Additional AG for the respondents present. Notice be issued to applicant as well as his counsel for attendance for 06.03.2019 before S.B.

MA
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

06.03.2019

Learned counsel for the applicant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the applicant request for adjournment. Adjourn. To come up for further proceeding on 11.04.2019 before S.B

(Signature)
Member

~~06.03.2019~~

~~Learned counsel for the petitioner present. Notice be issued to the respondents for implementation report on 11.04.2019 before S.B~~

~~Member~~



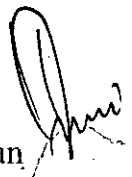
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Form-A
FORM OF ORDER SHEET

Court of _____

Miscellaneous Application No. 474 /2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.12.2018	<p>The application for correction of date in judgment in appeal no. 681/2016 submitted by Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar may be entered in the relevant register and put up to the Worthy Chairman for proper order please.</p>
2	1-1-19	<p style="text-align: right;">  REGISTRAR <u>24/12/18</u> </p> <p>This Miscellaneous application is entrusted to S. Bench to be put up there on <u>08-01-2019</u></p> <p style="text-align: right;">  CHAIRMAN </p>
08.1.2019		<p>Instant application is brought for correction of a date in judgment passed in Appeal No. 681/2016.</p> <p>It is noted in the application that extent of grant of salary to the appellant w.e.f "01.09.2004 to 14.03.2005" has erroneously been recorded to be from "01.09.2004 to 14.03.2015".</p> <p>The application, in essence, is for correction of typographical/clerical error, therefore, is entertainable. Notice be issued to the appellantas well as the respondents/applicants for 28.01.2019 before this Bench.</p> <p style="text-align: right;">  Chairman </p>

BEFORE THE HON'ABLE KHYBER PAKHTU NKHWA, SERVICE TRIBUNAL PESHAWAR.

Application No. _____/2018. In Service Appeal No.681/2016.

**Khyber Pakhtunkhwa
Service Tribunal**

Nasrullah Ex-SET (Retired GHS Kuladand District Charsadda)

Diary No. 2232

Versus

Dated 11-12-2018

Secretary, (E&SE) Department Khyber Pakhtunkhwa Peshawar & Others.

APPLICATION UNDER SECTION 153 OF CPC 2018 FOR
REVIEW OF THE JUDGMENT DATED 29/11/2018
TO THE EXTENT OF CORRECTION OF GRANT OF SALARY
W.E.F.01-09-2004 TO 14-03-2005 INSTEAD OF 14-3-2015.


Respectfully sheweth:-

Respondents No.1-5 submit as under:-

1. That the Titled case has been instituted on 20-06-2016 by the Appellant vide service Appeal No.,681/2016 under case Titled Nasrullah Ex-SET Retired GHS Kula Dand District Charsadda Versus Secretary, (E&SE) Department Khyber Pakhtunkhwa & Others. With the prayer That On acceptance of this appeal the respondents may be directed to pay the salaries of the applicant from 01-09-2004 till 14-03-2005. (Copy for the servicer Appeal is attached as Annexure "A")
2. That the Titled case has been decided vide judgment dated 29-11-2018 in favour of the Appellant with the directions vide para 5 of the said judgment dated 29/11/2018 vide which the appellant has been made entitled for the grant of salaries w.e.f.01-09-2004 to 14-03-2015 as against the actual prayer of the Appellant for the grant of outstanding salaries against the SET post w.e.gf. 01-09-2004 to 14-03-2005 which is a clerical mistake & liable to be corrected as per prayer of the Respondents under the relevant provision of law. (copy of the judgments is attached as Annexure "B",)

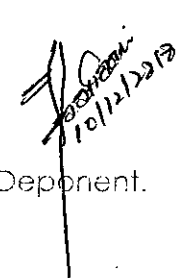
3. That the Hon'able Tribunal has got jurisdiction to entertained the instant application of the Respondents having no legal bar of being within time limitation.

Therefore, it is, most humbly prayed that on the acceptance of this application for Review of the judgments dated 29/11/2018 to the extent of the correction of the date for grant of salaries w,e,f, 01-09-2204 to 14-03-2005 instead of 14-03-2015, this Hon'able Tribunal may kindly be pleased to accept the instant application for review of judgment as per prayer of the respondents in the interest of justice.


Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar
(Respondents No 1-5)

AFFIDAVIT

I, **Hayat Khan Assistant Director (Litigation-II)** Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm and declare on oath that the contents of the present Review petition submitted by respondents No. 1-5 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Tribunal.


Deponent.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

35

No. 2339 /ST

Dated 3 / 12 / 2018

To

The Director E&SE,
Government of Khyber Pakhtunkhwa,
Peshawar.

*R/O
a/s, b
5/12/18
Peshawar*

Subject: -

JUDGMENT IN APPEAL NO. 681/2016, MR. NASRULLAH.

I am directed to forward herewith a certified copy of Judgement dated 29.11.2018 passed by this Tribunal on the above subject for strict compliance!

Encl: As above

[Signature]
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

AD/it

[Signature]
9/12

*RECEIVED ON
5/12/18
to the G/S.
[Signature]*

PA, DSE/WWP
DPI No. 729
Date 6-12-18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Appeal No. 681/2016

Date of Institution ... 20.06.2016

Date of Decision ... 29.11.2018

Nasrullah Ex-SET (Retired) GHS Kula Dhand Distric: Charsadda.
... (Appellant)

VERSUS

The Secretary, Elementary & Secondary Education, Peshawar and 4 others.
... (Respondents)

SYED NUMAN SHAH BUKHARI.
Advocate.

... For appellant

MR. MUHAMMAD JAN,
Deputy District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. HUSSAIN SHAH,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Learned counsel for the appellant stated that the appellant was not paid salary for the period commencing from 01.09.2005 to 14.03.2005 (6 months and 14 days). To verify the said fact the respondents were required to apprise the Tribunal from their record regarding attendance of duty by the appellant or otherwise at the place of his posting during relevant period.

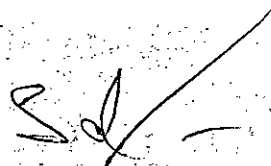
2. Today the record including attendance register of GHS Maryamzai, for the disputed period, has been produced in original which reflects that in the month of September 2004 the appellant had availed 9 days casual leave, in October 2004 the appellant remained absent throughout, in November 2004 he remained absent for 13 days, in December 2004 he was absent for 6 days, in January 2005 absence was for 18

days in February 2005 he remained absent throughout and in March 2005 he was absent upto his last day of duty in the said school.

3. The appellant stated at the bar that he would be satisfied if his salary for the disputed period is released against the number of days on which he had performed his duty.

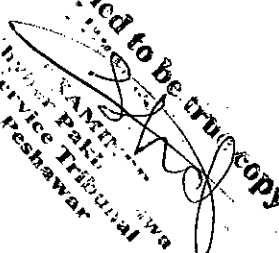
4. Learned counsel for the respondents, on the other hand, opposed the appeal and stated that the appellant, though retired now, had dubious conduct throughout his service and had remained away from duty at different intervals of time. In his view, the respondents had already remained lenient with the appellant by not initiating punitive proceedings against him for his faults.

5. At this stage, when the appellant already stands retired, we consider it appropriate to dispose of the appeal in hand in the manner that his salary for the days on which he performed duty as per documentary evidence available with the respondents during the disputed period i.e. between 01.09.2004 to 14.3.2015, shall be released forthwith in accordance with the law. File be consigned to the record room.


(HUSSAIN SHAH)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
29.11.2018

Certified to be true copy

Khwaja Pakt
Service Tribunal
Peshawar

طائر منقوشه ايجو دستان شاه

(A)

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BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 681/2016

Nasrullah

V/S

Education Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of order dated 31.8.2004	-A-	05-10
3.	copy of service book	-B-	11
4.	copy of order of LPR	-C-	12
5.	Copy of judgment	-D-	13-17
6.	Copy of order dated: 16.7.2009	-E-	18
7.	Copy of Execution Petition	-F-	19-21
8.	Copy of order 12.2.2016	-G-	22-23
9.	Copy of departmental appeal	-H-	24
10.	Vakalat Nama	-----	25

APPELLANT

THROUGH:

M. Noman Ali Bukhari

(SYED NOMAN ALI BUKHARI)

&

Taimur Ali Khan

(TAIMUR ALI KHAN)

(ADVOCATES, PESHAWAR)

(25)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 681 /2016

Khyber Pakhtukhwa
Service Tribunal

Nasrullah Ex- SET, (Retired) GHS Kula Dhand,
District Charsadda.

Diary No. 642

Dated 20/6/2016

(Appellant)

VERSUS

1. The Secretary Education, (E&SE), KPK, Peshawar.
2. The Director Education (E&SE) KPK, Peshawar.
3. The District Education Officer, Peshawar.
4. The Secretary Finance, KPK, Peshawar.
5. The Headmaster GHS Maryamzai, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974
FOR DIRECTING THE RESPONDENTS TO PAY THE SALARIES TO THE
APPELLANT FROM 01.09.2004 TILL 14.3.2005 AND AGAINST NOT
TAKING ACTION ON THE DEPARTMENTAL OF THE APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS
MAY BE DIRECTED TO PAY THE SALARIES OF THE APPELLANT
FROM 01.09.2004 TILL 14.03.2005 DATE. ANY OTHER REMEDY
WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE
THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

Filed today **FACTS:**

[Signature]
20/6/16
Registrar

1. That the appellant was appointed against CT post on dated 12.11.1987 in GHSS Tehkal in District Peshawar and performed his duty up to the entire satisfaction of his superior and no complaint has been filed against him.

2. That the appellant was transferred to GHS Maryamzai on 1.5.2000 and was promoted as SET post in the same School on vide order dated 31.8.2004. **(Copy of order is attached as Annexure-A).**

3. That after the promotion the appellant took over charge of the post of SET in GHS Marayumzai on 1.9.2004 despite the fact of that the salary of the appellant was stopped but the appellant continued his duty there till his further transfer to GMS Kher Kheri and the appellant was not paid his salaries for the period spent at GHS Marayumzai and the said salaries are still outstanding against the respondents. The appellant was then transferred to GMS Kher kheri on 15.3.2005 which is evident from the Service Book of the appellant, and the appellant was lastly retired on 1.12.2015 on attaining the age of superannuation which is evident from the order of LPR of the appellant, however the department did not paid salaries from 1.9.2004 to 14.3.2005 to the appellant till date. **(Copies of Service Book and LPR order are attached as Annexure-B&C).**

4. That the appellant filed service appeal NO. 2603/2000 for adjustment and grant of salaries the case was accepted by the Honorable Tribunal on 4.8.2003, then appellant filed execution ^{application} ~~petition~~ which was finally heard on 16.07.2009 and the august tribunal observed that the major portion of the judgment has been stood implemented and for the remaining claim the case was remanded to the respondent Deptt:. **(Copy of judgment and order dated. 16.07.2009 is attached as Annexure – D & E).**

5. That the appellant has also filed execution petition no. 02/2014 for his claim as per order dated 16.07.2009. The said execution petition was heard on 12.02.2016 and the august Tribunal was kind enough to observe that the judgment dated 04.08.2003 stood implemented; however the appellant could seek further remedy for his claim of salaries w.e.from 1.9.2004 to 14.3.2005 through a separate appeal. **(Copy of execution petition and order are attached as Annexure-F & G).**

6. That then the appellant filed departmental appeal for the salaries from 1.9.2004 to 14.3.2005 on 1.3.2016, which was not responded with in the statutory period of ninety days. **(Copy of departmental appeal is attached as annexure-H).**

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7. That now the appellant has no other remedy, but constrain to file the instant appeal on the following grounds amongst others.

GROUND:

- A) That the non-payment of the salaries from 1.9.2004 to 14.3.2005 and not taking action on the departmental appeal of the appellant are against the law, facts and norms of justice.
- B) That according to Sec: 17 of the Civil Servant Act 1973, every Civil Servant is entitled for the payment for the service which he rendered and as the appellant was employee of the Education Deptt., at that time therefore he is entitled to full pay.
- C) That not paying monthly salary from 1.9.2004 to 14.3.2005 to the appellant despite of the employee of the Deptt: amounts to forced labour which is prohibited under Article-11 of the Constitution of Pakistan.
- D) That the appellant has not been treated according to law and rules and has been kept deprive from his legal of pay.
- E) That the appellant has been deprived from his legal right of pay for the period mentioned above in an arbitrary manner which is not permissible under the norms of justice and fair play.
- F) That after the promotion the appellant took over charge of the post of SET in GHS Marayumzai on 1.9.2004 without drawing his salaries because the salaries were stopped and the appellant has performed his duty there up to 14.3.2005 without any salary being paid to appellant.

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- G) That the appellant had performed his full duty for the period mentioned above and as such he is fully entitled for the payment of salaries for the period mentioned above.

- H) That the appellant seeks permission to advance other grounds and proofs at the time hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Nasrullah

APPELLANT
Nasrullah

THROUGH:

M. Noman Ali Bukhari

(S. NOMAN ALI BUKHARI)

&

Taimur Ali Khan

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
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Appel No. 681/2016

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Deputy District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,

MR. HUSSAIN SHAH,

... CHAIRMAN

... MEMBER(E)

JUDGMENT

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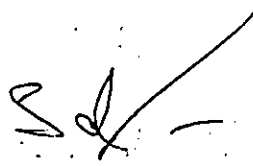
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MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
29.11.2018

Certified to be true copy
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Service Tribunal
Peshawar