

29.11.2018

Husband of the petitioner present and seeks adjournment for arguments. Admittedly the petitioner has been reinstated in service w.e.f the date of her removal from service i.e. 04.06.2015 subject to final order of august Supreme Court of Pakistan on the CPLA filed by government of Khyber Pakhtunkhwa Higher Education Department. Adjourn. To come up for further proceedings/arguments on 10.01.2019 before S.B

  
Member

10.01.2019

Nemo for petitioner. Addl. AG for the respondents present.

It is already 12.40 P.M and the case has been called more than once. There is no one to represent the petitioner in this Contempt of Court Petition, therefore, it is dismissed for non-prosecution.

  
Chairman

ANNOUNCED  
10.01.2019

C.O.C No. 237/2017  
Rushda Habib vs Govt

03.05.2018

The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 25.07.2018 before S.B.



Reader

25.07.2018

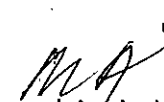
Since the 25<sup>th</sup> July 2018 has been declared as public holiday in connection with General Election 2018, therefore the case is adjourned to 29.08.2018 for the same.



Reader

29.08.2018


Counsel for the petitioner Mr. Taimur Ali, Advocate and Mr. Usman Ghani, District Attorney alongwith Mr. Murad Khan, Superintendent for the respondents present. Revised implementation report as per order sheet dated 11.04.2018 has not been produced. Representative of the department is directed to produce revised implementation report on 17.10.2018 before S.B.



(Muhammad Amin Khan Kundi)  
Member

17.10.2018

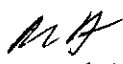
Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the petitioner seeks adjournment. Granted. Case to come up for further proceedings on 29.11.2018 before S.B.



(Ahmad Hassan)  
Member

15.03.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Ibrar Ali, Assistant Director and Mr. Murad Khan, Superintendent for the respondents present. Implementation report not submitted. Learned Additional AG seeks further adjournment. Last opportunity granted. Adjourned. To come up for implementation report/further proceedings on 11.04.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

11.04.2018

Counsel for the petitioner and Addl: AG alongwith Mr. Ibrar Ali, AD (Lit) for respondents present. Representative of the respondents produced order dated 06.04.2018, whereby the appellant was reinstated into service w.e.f the date of her removal i.e 04.06.2015 subject to the final outcome of the CPLA filed by the respondents in the Supreme Court of Pakistan. Attention is invited to s. no..1 of concluding para of order sheet dated 10.11.2017 which is reproduced below:-

*“As de-novo inquiry was not completed within the time span specified in the above judgment, hence, it has become void, non-existent and of no legal value. The petitioner stands reinstated in service from the date of her removal from service. The intervening period may be treated as leave of the kind due.*

It is clarified that the aforementioned reinstatement order is not in line with the directions contained in the above order sheet. Respondents are directed to produce revised implementation report. To come up for further proceedings on 03/05/18 before S.B.


  
(Ahmad Hassan)  
Member

C.O.C No. 237/2017  
Rushda Habib vs Govt

20.02.2018


Counsel for the petitioner and Muhammad Jan, DDA alongwith departmental representative present. Counsel for the petitioner stated at the bar that the petitioner was reinstated by this Honorable Tribunal service vide judgment dated 15.11.2016 with the direction to conduct inquiry within a period of two months otherwise the petitioner shall be deemed to be reinstated into service. That the respondent has not conduct de-novo within the specified period, nor any order has been issued for re-instatement and hence the instant COC for implementation of the judgment.

Learned counsel for the petitioner stated that despite the acceptance of the main appeal as well as execution petition the petitioner was not reinstated by the respondent. The representative of the respondent stated at the bar that the matter is in process and implementation report will be submitted on the next date of hearing. In case implementation report is not submitted, then coercive measures will be taken against the respondents. Adjourned. To come up further proceedings on 06.03.2018 before S.B.

  
(Gul Zeb Khan)  
Member

06.03.2018


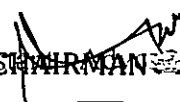

Counsel for the petitioner present. Mr. Muhammad Jan, DDA alongwith Mr. Ibrar Ali, ADO Litigation for the respondent present. Representative of the respondent department submitted reply to COC on behalf of respondent no. 2, 3 & 4 which is placed on file. To come up for further proceedings on 15.03.2018 before S.B.

  
(Gul Zeb Khan)  
Member

# FORM OF ORDER SHEET

Court of \_\_\_\_\_

C.O.C Application No. 237/2017

| S.No.      | Date of order proceedings | Order or other proceedings with signature of judge or Magistrate   |
|------------|---------------------------|--|
| 1          | 2                         | 3  |
| 1          | 12/12/2017                | <p>The C.O.C application of Mst. Rushda Habibi submitted today by her, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> <br/>                     REGISTRAR 12/12/17                 </p>  |
| 2-         | 15/12/17                  | <p>This C.O.C application be put up before S. Bench on <u>01/01/18</u>.</p> <p style="text-align: center;"> <del>Petitioner and person present and</del>  CHAIRMAN<br/> <del>General of the respondents present and</del><br/> <del>of the respondents present and</del><br/> <del>of the respondents present and</del><br/> <del>of the respondents present and</del> </p>              |
| 01.01.2018 |                           | <p>Clerk of the counsel for appellants present and Mr. Riaz Painsa Khel, Assistant AG present. Notice be issued to the respondent for submission of reply. To come up for reply and arguments on <del>C.O.C Application</del> on 20.02.2018 before</p> <p style="text-align: right;"> <br/>                     (Gul Zeb Khan)<br/>                     Member (I)                 </p> |

BEFORE THE CHAIRMAN OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Contempt Petition and Implementation of Execution Judgement 237 / 2017

in

Service Appeal No. 1015/ 2015

Mrs. Rushda Habib ..... Petitioner

Secretary Higher Education, Government of Khyber Pakhtunkhwa, others ..... Respondents

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| 3    | Judgement on Execution Petition by the Honorable Tribunal | 10.11.2017 | B        | 10-12 |
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Petitioner



Rushda Habib

Lecturer in Zoology

GGDC, Sheikh Maltun Mardan

Cell: 03338053053

Dated: 12 / 12 / 2017

BEFORE THE CHAIRMAN OF THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Contempt Petition and Implementation of Execution Judgement 237 / 2017  
in

Service Appeal No. 1015/ 2015

Mrs. Rushda Habib ..... Appellant

Versus

1. Chief Minister  
Province of Khyber Pakhtunkhwa,  
Chief Minister's Secretariat, Peshawar.
2. Chief Secretary  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar
3. Secretary, Higher Education Department  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar
4. Director Higher Education  
Directorate of Higher Education Department  
Government of Khyber Pakhtunkhwa..... Respondents

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1061

Dated 12/12/2017

**CONTEMPT PETITION**

Respectfully Sheweth,

It is humbly submitted that:

1. This Hon'ble tribunal reinstated me into service in its decision on 15.11.2016 (Copy attached, page 4-9).
2. The execution petition was decided on 10.11.2017 again directing the respondents to implement the decision (Copy attached, page 10-12).

3. With two judgements of this court in hands, I am still wandering here and there between the offices of respondents. Then after application to the chief secretary, respondent No 2 (Copy attached page 14) and arrival report to the Principal (Copy attached, page 13) have been submitted but of no use.
4. It is, therefore, humbly requested to implement the judgement of this tribunal for my reinstatement and start proper contempt of court proceedings against respondents.

Appellant



Rushda Habib  
Lecturer in Zoology  
GGDC, Sheikh Maltun Mardan  
Cell: 03338053053

Dated: 12 / 12 / 2017



Date of  
order/  
proceedings

2

Order or other proceedings with signature of Judge or  
Magistrate

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR

Appeal No. 1015/2015

Mrs. Rushda Habib Versus Chief Secretary, Government of  
Khyber Pakhtunkhwa, Civil Sectt. Peshawar etc.

JUDGMENT

15.11.2016

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-

Appellant with counsel and Mr. Muhammad Adeel Butt,  
Addl. Advocate General for the respondents present.

2. Mrs. Rushda Habib, Ex-Lecturer of Zoology hereinafter  
referred to as the appellant has preferred the instant service  
appeal under Section 4 of the Khyber Pakhtunkhwa Service  
Tribunal Act, 1974 against order dated 4.6.2015 vide which she  
was removed from service on the allegations of absence from  
duty where-against her departmental appeal dated 09.06.2015  
was not responded and hence the instant service appeal on  
14.09.2015.

3. Brief facts of the case of the appellant are that she was  
serving as Lecturer of Zoology at Government Girls Degree  
College Sheikh Maltoon, Mardan while her husband Mr. Farooq  
Jan was serving as Lecturer in Biology at Abdul Wali Khan  
University, Mardan. Mr. Farooq Jan was awarded scholarship  
by the University for Ph.D in Climate Dynamics and

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KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

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Environment Biology at the Georg August University of  
Gottingen Germany in the year, 2011. Appellant accompanied  
her husband after obtaining ex-Pakistan leave for a period of 2  
years w.e.f. 01.09.2011 to 31.08.2013 sanctioned vide  
notification dated 11.10.2011. Appellant then also secured  
admission abroad for improving her qualification which was  
allowed to her vide Certificate of Enrollment dated  
21.06.2013. On the strength of the said admission she applied  
for extension of leave for 27 months w.e.f. 01.09.2013 to  
30.06.2016 which was however regretted vide letter dated  
02.09.2014. Appellant repeated her request for leave vide  
application dated 12.09.2014 and, meanwhile, also developed  
chronic health problem constraining her to undergo major  
surgery abroad in Klinikum Hospital Gottingen Germany  
where-after she returned and submitted her arrival report dated  
16.05.2015. On coming to know of departmental disciplinary  
proceedings on the allegations of absence she submitted  
application dated 25.05.2015 to the Chief Secretary (respondent  
No.2) which was endorsed by him to the Secretary Higher  
Education Department (respondent No. 3) on 27.05.2015 which  
remained nonresponsive constraining her to submit two other  
applications dated 28.05.2015 and 01.06.2015 to respondent  
No. 3 but of no avail and subsequently, vide impugned order  
dated 04.06.2015 appellant was removed from service for the  
alleged absence where-against she preferred departmental  
appeal on 09.06.2015 and after lapse of statutory period, the  
instant service appeal was preferred.


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~~7/1/13~~

4. Learned counsel for the appellant has argued that the appellant had proceeded abroad after obtaining 2 years ex-Pakistan leave w.e.f. 01.09.2011 to 31.08.2013 alongwith N.O.C for proceedings abroad sanctioned vide notification dated 11<sup>th</sup> October 2011. That departmental proceedings and impugned order are against facts and law as the appellant was afforded no opportunity of hearing despite her availability. That the so-called notice under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not issued by the competent authority i.e. the Chief Secretary. That even the publication of notice in the newspapers were issued under the signature of the Secretary to Government of Khyber Pakhtunkhwa Higher Education Department who was not competent authority within the meaning of E&D Rules, 2011. That the respondents were bound to have afforded opportunity of hearing to the appellant as she was having a valid defence of ailment in her favour as she had fallen ill abroad and was therefore not in a position to travel and assume duty.

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KHYBER PAKHTUNKHWA  
GOVERNMENT  
SECRETARY

5. In support of his stance learned counsel for the appellant has referred to and placed reliance on Articles 4 & 10-A of Constitution of Islamic Republic of Pakistan, 1973, Rule-12 of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 and case-laws reported as 2001-PLC (C.S) 771 (Quetta High Court) & 2000-PLC(C.S) 346 (Supreme Court of Pakistan).

  
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6. Learned Addl. Advocate General has argued that though

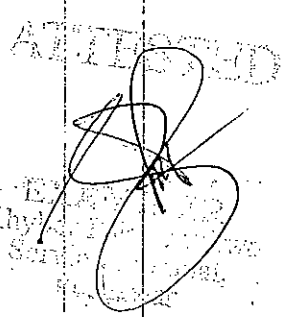
the appellant was granted ex-Pakistan leave alongwith N.O.C for proceeding abroad however she failed to resume duty after the expiry of the said leave. That grant of leave was the sole discretion of the authority and the same was not extended in its discretion by the authority in her favour. He further argued that the appellant opted to get admission for improving her qualification without the requisite prior approval of the department. That the appellant failed to show responsible behavior. That the codal formalities i.e. issuance of notice to the appellant followed by publication in leading newspapers were complied with and where-after the impugned order was passed which is in accordance with law and warrants no interference.

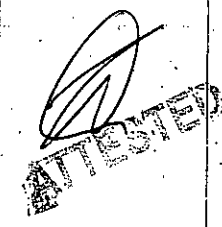
7. We have heard arguments of learned counsel for the parties and perused the record.

8. It is necessary to mentioned that this Tribunal vide judgment dated 20.07.2016, had earlier remitted the matter to the respondents with the directions to decide the departmental appeal of the appellant within a period of one month after receipt of the judgment however the appellant preferred appeal before the august Supreme Court of Pakistan which was accepted vide worthy judgment dated 17.10.2016 and the judgment of this Tribunal was set aside and the case was sent back to this Tribunal for decision afresh in accordance with law within a period of 60 days.

9. It is not disputable that the appellant remained absent from duty after expiry of her ex-Pakistan leave granted w.e.f.



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01.09.2011 to 31.08.2013. The application of the appellant for extension of leave was regretted vide letter dated 02.09.2014 constraining the respondents to proceed against the appellant under the provisions of Rule 7 read with Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It was not disputed before us that the competent authority for the purpose of the said rules is the Chief Secretary (respondent No. 2). A careful perusal of Rule- 9 would suggest that it was for the competent authority i.e. the Chief Secretary to have issued notice to the appellant and, in case of no response, should have published such a notice in atleast in 2 leading newspapers directing the appellant to resume duty within 15 days of the publication of such notice. In the case in hand the said notice was issued by the Secretary Government of Khyber Pakhtunkhwa Higher Education Department (respondent No. 3) who is not competent authority for the purpose of the said Rules and as such we are of the humble view that the said notice was not issued by the competent authority and was therefore liable to be set aside. The respondents were obliged to have proceeded against the appellant in accordance with law and in the mode and manners prescribed by law and departure by them from the rules had therefore invalidated the proceedings as observed in a reported case 2001-PLC(C.S)771 (Quetta High Court).

10. Additionally the appellant had presented herself for duty and allied matters on 16.05.2015 as she had submitted her arrival report wherein she had even stated reasons for her absence from duty but despite the said developments appellant

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was deprived of opportunity of hearing and was therefore treated otherwise than in due course of law and fairly.

(9)

11. In the circumstances narrated above we are of the view that the enquiry conducted by the respondents <sup>is</sup> not tenable in the eyes of law. We are therefore constrained to accept the present appeal and set aside the impugned order dated 04.06.2015 and reinstate the appellant in service but placing the respondents at liberty to conduct denovo enquiry against the appellant wherein she be afforded opportunity of hearing including her plea of ailment and study and there-after orders deem appropriate be passed by the competent authority. We direct that the enquiry shall be conducted and concluded within a period of 2 months from the date of receipt of this judgment. In case the respondents fail to conduct and conclude the enquiry within the specified period of 2 months then it shall be deemed that the appellant has been reinstated in service and her period of absence from duty till date shall then be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

Announced 15.11.2016 *Sd/- M. Azim Khan Afzali,*  
Chairman

*Sd/- M. Aamir Nadir,*  
Member

*[Handwritten signature]*  
CERTIFIED COPY  
15.11.2016

18-11-2016

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16 ———  
2 ———  
18 ———

*[Handwritten signature]*  
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1  
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Application No. 18 /2017

IN

Service Appeal No. 1015/2015

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 75

Dated 3-2-20

Mrs. Rushda Habib,  
Ex-Lecturer in Zoology,  
Government Girls Degree College,  
Sheikh Maltoon, Mardan,  
Higher Education Department,  
Khyber Pakhtunkhwa, Peshawar.....



Applicant


Versus

1. The Hon'ble Chief Minister,  
Khyber Pakhtunkhwa.
  2. Mr. Abid Saeed,  
Chief Secretary,  
Government of Khyber Pakhtunkhwa, Peshawar.
  3. Mr. Zafar Ali Shah  
The Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Higher Education Department,  
Civil Secretariat, Peshawar.
  4. Mr. Muhammad Rooz,  
The Director of Higher Education,  
Directorate of Higher Education,  
Khyber Pakhtunkhwa, Peshawar.....
- Respondents

APPLICATION UNDER CLAUSE (d) OF SUB-SECTION 2-OF THE SECTION 7 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR EXECUTION OF THE DECISION DELIVERED BY THE LEARNED BENCH OF THIS TRIBUNAL IN SERVICE APPEAL NO. 1015/2015 ON 15-11-2016 THEREBY IMPUGNED ORDER OF REMOVAL FROM SERVICE WAS SET ASIDE AND APPLICANT WAS REINSTATED IN SERVICE.

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Attesting Officer  
Khyber Pakhtunkhwa

  
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0.11.2017

11



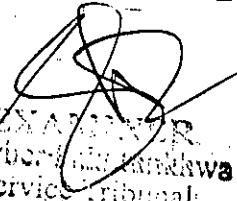
Petitioner with counsel Mr. Usman Ghani, District Attorney alongwith Mr. Naeem Gul, AD(Lit) and Mr. Murad Khan, Supdt for respondents present. Learned counsel for the petitioner argued that Execution Petition no. 18/2017 was filed in service appeal no. 1015/15 as judgment of this Tribunal was not implemented by the respondents within the stipulated period. Vide judgment dated 15.11.2016 the above appeal was accepted and the respondents were placed at liberty to conduct *de-novo* enquiry within<sup>a</sup> period of two months from the date of receipt of the said judgment failing which the appellant shall be deemed to have been reinstated in service and period of absence shall then be treated as leave of the kind due. He further contended that petitioner visited the office of respondents many times to inquire about the de-novo enquiry proceedings but to no avail. Finally through letter dated 19.01.2017 the respondent no.3 was informed about receipt of judgment etc. but was advised by the concerned officer to wait for further orders. Subsequently, in response to her application she was reinstated for the purpose of conducting de-novo enquiry under E&D Rules 2011 vide order dated 22.02.2017. Enquiry was concluded on 24.03.2017. Deadline given by the Tribunal for conducting de-novo inquiry expired on 18.01.2017.

As enquiry was not concluded within stipulated period, hence, this Tribunal suspended the operation of letter dated 22.02.2017 vide order sheet dated 19.03.2017 and the respondents were put on notice to clarify why the same was not conducted/concluded within a span of two months? As such fresh inquiry pending against the appellant has no legal value. Furthermore, the appellant informed that despite restraining orders issued by this Tribunal show cause notice was served on her vide 29.09.2017. She submitted written defense on 09.10.2017.

On the other hand learned District Attorney argued that the petitioner submitted an application for reinstatement on 20.01.2017 and was reinstated on 22.02.2017 for the purpose of conducting *de-novo* enquiry. Enquiry was finalized on 24.03.2017 but kept pending due to suspension order issued by this Tribunal vide order sheet dated 09.03.2017. As a result of stay order the respondents may be guided for further course of action. At the end learned District Attorney admitted at the bar that details of show cause notice were not shared by the departmental representative with him, rather he was kept in the dark.

Careful perusal of record would reveal that the respondents flouted the directions contained in judgment dated 15.11.2016 intentionally and deliberately; hence, failed to finalize inquiry proceedings within the

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District Attorney  
Peshawar Service Tribunal,  
Peshawar

  
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stipulated period. Any cogent reason for delay has not been brought forward by the respondents. Proceedings after expiry of deadline given in the aforementioned judgment would be void in the eyes of law. It is further corroborated by a letter submitted by the petitioner dated 19.01.2017. Reliance is placed on case law reported as 2017 PLC (C.S) note 20 and 2007 PLC (C.S) 959 It is regretted that the representative of the respondents did not assist the learned District Attorney by concealing facts and misguiding him. It amounts to unbecoming of an official and also showing dereliction towards official duty, hence, misconduct. He has also become guilty of concealing facts from this Tribunal. Due to the dubious conduct of departmental representative the District Attorney was also put in an embarrassing position. Despite suspension of operation of order dated 22.02.2017 show cause notice was served on her vide letter dated 22.09.2017. She submitted reply to the show cause notice on 09.10.2017. That the respondents willfully violated the directions of this Tribunal and are required to be proceeded under order no. 21 of CPC.

In view of the fore-going the instant execution petition is accepted with following directions, to the respondents:

- I. As de-novo inquiry was not completed within the time span specified in the above judgment, hence, it has become void, non-existent and of no legal value. The petitioner stands reinstated in service from the date of her removal from service. The intervening period may be treated as leave of the kind due.
- II. The respondents are directed to take disciplinary action against those responsible for delaying this case as a result of which inquiry proceedings were deliberately delayed.
- III. Disciplinary proceedings be initiated against the departmental representative for concealing facts from this Tribunal and misguiding the learned District Attorney.

File be consigned to the record room.

Announced: 10.11.2017 *SD/ Ahmad Hassan, Member*

*[Signature]*  
**ATTESTED**

**Certified to be true copy**  
*[Signature]*  
Secretary

Date of Presentation of Application 16-11-17  
 Number of Words 1200  
 Copying Fee 8.00  
 Urgent 2.00  
 Total 10.00  
 Name of Copyist [Signature]  
 Date of Completion of Copy 16-11-17  
 Date of Delivery of Copy 16-11-17

(13)

The Principal


Government Girls Degree College, Sheikh  
Maltoon, Mandau

Subject: Arrival report

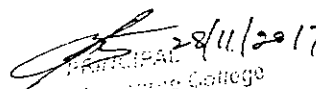
Respected Principal,

Kindly accept my arrival  
report in the light of the attached  
judgement, dated 10-11-2017 (Page 2-4).

28-11-2017

  
Rushda Habib  
Lecturer in Zoology  
G. G. D. College,  
Sheikh Maltoon  
Mandau.

Seen.

  
PRINCIPAL  
Govt Girls Degree College  
Sheikh Maltoon Mandau

  
ATTESTED

The Chief Secretary  
Government of Khyber Pakhtunkhwa Peshawar

PS/C.S. Peshawar Pkhtunkhwa  
Dist: 9/22  
Date: 5-12-17

Subject: Application for action on the decision of the Khyber Pakhtunkhwa service tribunal Execution application No 18/2017 dated 10.11.2017 (Copy attached)

Respected Sir,


A copy of the decision of the Honorable Khyber Pakhtunkhwa service tribunal Peshawar on the aforementioned execution application (page 2-4) is attached for your kind consideration. The operating Para of this decision on page 4 clearly states that:

*"In view of the foregoing the instant execution petition is accepted with the following directions to the respondents: As de-novo inquiry was not completed within the time span specified in the above judgement, hence, it has become void, nonexistent and of no legal value. The petitioner stands reinstated in service from the date of her removal from service. The intervening period may be treated as leave of the kind due".*

My humble request in the light of these directions:

1. As I have already submitted my arrival / joining report on 15.05.2015 to the Director Higher Education, which was accepted vide office order No. 12659/CA-V/Estt: Branch/A-12/Ms Rushda Habib/ Zoology Dated Peshawar, the 22/5/2015 (copy attached).
2. Therefore, kindly issue notification of my reinstatement into service from the date of my removal from service.
3. I shall be highly thankful to you.

05.12.2017

  
Rushda Habib  
Lecturer in Zoology  
G.G.D. College Sheikh Maltun Mardan

Copy to:

1. Registrar Khyber Pakhtunkhwa services tribunal
2. Secretary Higher Education, Peshawar
3. Director Higher Education department Peshawar
4. Principal G.G.D.C Sheikh Maltun Mardan
5. Personal file

Registration KPIK Tribunal  
Dispatch No 2471  
Judgment delivered to  
Secretary Higher Education  
dated 16/11/2017  
Rec

  
5/12/17  
  
ATTESTED

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

C.O.C No.237/2018  
in  
Service Appeal No.1015/2015

Rushda Habib

VS

Govt: of KPK.


.....  
**OBJECTION ON THE REPLY OF RESPONDENTS.**  
.....

**RESPECTFULLY SHEWETH:**

1. Incorrect. The notification dated 22.02.2017 submitted by the respondents had already been suspended in Execution petition No.18.2017 of the petitioner. The petitioner had filed application for suspension of the notification dated 22.2.2017 as in the judgment dated 15.11.2016 it was clearly mentioned that *the inquiry shall be conducted and concluded within period of two months from the date of receipt of this judgment. In case the respondents fail to conduct and conclude the enquiry within the specified period of 02 months then it shall be deemed that the appellant has been reinstated in service and her period of absence from duty till date shall then be treated as leave of the kind due* and the said judgment was received by the department on 23.11.2016 and the stipulated period for inquiry had already ceased on 23.01.2017. Therefore the Honorable Tribunal suspended the order dated 22.02.2017 vide order dated 09.03.2017. The Honorable Tribunal issued several warnings to the department for submission of implementation report, but the respondent department did not obey the order of this Honorable Tribunal. The department ignored all the warnings of the Honorable tribunal, continued with arrogant attitude and issued Show cause notice to the petitioner despite restraining orders of this august tribunal. Finally the Honorable Tribunal accepted execution petition for the petitioner 10.11.2017 and declared the petitioner again as reinstated into service from the date of her removal from service. Hence submission of the notification dated 22.2.2017 on this stage is nothing but just to not obey the order dated 10.11.2017 of this august Tribunal in Execution Petition NO.18/2017 and delay the matter further.**(Copy of relevant documents are attached as annexure-A)**
2. Admitted correct. Hence no comments.

3. Incorrect. Mere filing of CPLA shall not prevent execution of the judgment dated 10.11.2017 as per rule XX of the Supreme Court Rules it is clearly mentioned that *the filing of a petition for leave to appeal or an appeal shall not prevent execution of the decree or order appealed against, but the court may, subject to such terms and conditions as it may deems fit to impose, order a stay of execution of the decree or order a stay of proceeding, in any case under appeal to this court.*
4. No comments endorsed by the respondent that para 4 of the C.O.C is correct.

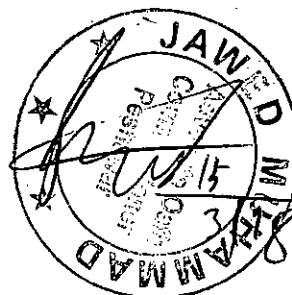
It is, therefore, most humbly prayed that the C.O.C may be accepted as prayed for.

**PETITIONER**  
**THROUGH:**   
**TAIMUR ALI KHAN**  
**(ADVOCATE HIGH COURT)**

**AFFIDAVIT:**

It is affirmed and declared that the contents of the objection to reply are true and correct to the best of my knowledge and belief.

  
DEPONENT



Annex A - (3)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1932 /ST

Dated 17 / 11 / 2016



To

The Secretary Higher Education,  
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 15:11 .2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

*Certified true copy*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 29-6-17  
Number of Words 800  
Copying Fee 6-  
Urgent ✓  
Total ✓  
Name of Copyist [Signature]  
Date of Completion of Copy 29/6/17  
Date of Delivery of Copy 29-6-17

4

VFF Routine No. 1

# DAK BOOK

| Date | To whom Addressed          | Contents of Envelope                        | Where at Post Office | Date Recd |
|------|----------------------------|---|----------------------|-----------|
| 1    | Secy Higher Education Pesh | <del>No. 1932</del><br><del>Jan 23/11</del> |                      |           |
| 2    | P. P. O                    | No. 1881<br>on 2/2/11                       |                      |           |
| 3    | Secy Health                | No. 1894<br><br>Jan 23/11                   |                      |           |

5

# Execution Petition No. 18/2017 Rushda Habib vs Higher Edu. Deptt.

09.03.2017



Petitioner Rushda Habib Ex-Lecturer in Zoology alongwith learned counsel present. This execution petition has been filed in pursuance of the judgment of this Tribunal dated 15.11.2016 wherein in concluding para it was indited that the inquiry be concluded within a period of two months from the date of receipt of this judgment and in case the respondents failed to conduct and conclude inquiry within a specified period of two months then it shall be deemed that the appellatant has been reinstated into service.

That two months has elapsed and now the respondents vide letter No. SO(C-III)/HE/1-2/09/Rushda Habib issued on 22.02.2017 has taken first step to conduct a fresh inquiry that is after lapse of the stipulated period. The learned counsel for petitioner has filed another application today received from the office of Registrar which is placed on the instant execution petition. Through this application learned counsel for petitioner seek suspension of fresh inquiry on the ground that it was issued after the stipulated period and that respondents now could not initiate any inquiry.

The operation of above mentioned letter is hereby suspended till further orders and the respondents be put on notice to clarify that why this inquiry was not conducted within the stipulated period. To come up for further proceedings on 14.04.2017 before S.B.

*(Signature)*  
(ASHFAQUE TAJ)  
MEMBER

Certified to be true copy  
*(Signature)*  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

|                                     |                    |
|-------------------------------------|--------------------|
| Date of Presentation of Application | 13-03-17           |
| Number of Words                     | 800                |
| Copying Fee                         | 600                |
| Urgent                              | 200                |
| Total                               | 800                |
| Name of Copyist                     | <i>(Signature)</i> |
| Date of Copying                     | 13-3-17            |
| Date of Submission                  | 13-3-17            |



6



Execution Petition No. 18/2017  
Rushida Habib vs Govt

Counsel for the petitioner and Asst: AG alongwith Mr. Naecm Gul, AD(Lit) and Mr. Murad Khan, Supdt for respondents present. Representative of the respondents submitted para-wise comments in connection with Execution Petition in hand. On the other hand learned counsel for the petitioner vehemently contested that the respondents failed to conclude the enquiry within the deadline given in the Tribunal judgment dated 15.11.2016. As such enquiry report and recommendations contained in it had become infructuous and void. Learned AAG argued that de-novo enquiry was initiated on 22.02.2017 and concluded on 24.03.2017. When confronted on the point of deadline given in the aforesaid judgment he failed to give a plausible explanation and requested for adjournment. The respondents are also directed to provide documentary evidence of receipt of judgment dated 15.11.2016. To come up for further proceedings on 04.08.2017 before S.B.

(Ahmad Hassan)  
Member

04.08.2017

Petitioner in person present. Mr. Murad Ali, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Implementation report not submitted. Last opportunity granted for submission of implementation report. Adjourned. To come up for implementation report on 08.09.2017 before S.B.

(Muhammad Amin Khan Kundi)  
Member

Certified to be true copy  
EXCUTIVE  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 8-8-17

Number of Words 900

Copying Fee 9/-

Urgent 2/-

Total 6/-

Name of Copyist [Signature]

Date of Completion 8-8-17

Date of Delivery of Copy 8-8-17



7

Execution Petition No. 18/2017  
Mst. Rushda Habib vs Govt.

15.09.2017

Petitioner with counsel present. Mr. Muhammad Adeel Butt. Additional AG for the respondents also present. Implementation report not submitted. Learned Additional AG requested for further adjournment. The respondents are directed to implement the judgment of this Tribunal on or before the next date otherwise coercive measure shall be taken against them. Adjourned. To come up for implementation report on 10.11.2017 before S.B.

*S.D.F.*  
(Muhammad Amin Khan Kundli)  
Member

Certified true copy  
*S.D.F.*  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 25-9-17  
Number of Words 800  
Copying Fee 6-  
Urgent 2-  
Total 8-  
Name of Copyist *M. W.*  
Date of Completion 25-9-17  
Date of Delivery of Copy 25-9-17

(8)

SHOW CAUSE NOTICE

I, Chief Secretary Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Ms. Rushda Habib, Lecturer in Zoology (BS-17) Govt. Girls Degree College Sheikh Maltoon Mardan, as follows:

- i. That consequent upon the completion of inquiry conducted against you by the inquiry committee for which you were given opportunity of hearing vide communication No.SO(C-III)/HE/1-2/09/Rushda Habib/3957-61 dated 22-02-2017.
- ii. Ongoing through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee.

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

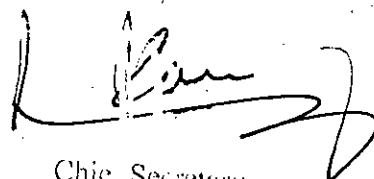
- (a). Misconduct
- (b). Absent from duty

2. As a result thereof, I as competent authority, have tentatively decided to impose upon you the penalty of Removal from Service under rules 4 of the said rules.

3. You are, thereof, required to show causes to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry committee is enclosed.



Chief Secretary  
Khyber Pakhtunkhwa

12/11



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

COC No. 237/2018

S.A.No.1015/2015

Rushda Habib.....Appellant.

Versus

Govt. of Khyber Pakhtunkhwa

Through Chief Secretary and Secretary, Director

Higher Education

Department Peshawar.....Respondents

**SUBJECT: REPLY TO COC ON BEHALF OF RESPONDENTS NO. 1, 2, 3, and 4**

**Respectfully Sheweth: -**

1. Correct that the Honourable Service Tribunal passed an order whereby the respondents are directed to conduct de-novo inquiry and reinstate the appellant for the purpose of inquiry. In compliance of court Order, the respondent department reinstated the appellant for the purpose of inquiry **(copy of notification of reinstatement is attached as Annex-A).**
2. Correct to the extent that the appellant filed execution petition. The Honourable service tribunal passed another order whereby, respondents are directed to reinstate the appellant from the date of her removal from service. Moreover, the honourable service Tribunal further directed to take disciplinary action against those responsible for delaying this case as a result of which inquiry proceedings were deliberately delayed.
3. Incorrect. The respondent department filed CPLA in the apex court of Pakistan against the order dated 10/11/2017 passed by Honourable service Tribunal, in which date of hearing is not yet fixed.
4. Needs no comments.

**Prayers: -**

Therefore, it is, humbly prayed that the instant COC is based on mis- conception /mis-statement hence, may graciously be dismissed with cost.




Secretary

Higher Education Department

Respondent-No.3

**Secretary**

Govt. Of Khyber Pakhtunkhwa  
Higher Education,  
Archives & Libraries  
Department.



Chief Secretary  
Govt of Khyber Pakhtunkhwa  
Respondent No.2



Director

Higher Education Department

Respondent No.4

15/2/18

Annex-A

127  
**REGISTERED**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES &  
LIBRARIES DEPARTMENT**

Dated Peshawar, 22<sup>nd</sup> February, 2017

**NOTIFICATION**

**No. SO(C-II)HE/1-2/09/Rushda Habib/.** In continuation of this Department notification of even number dated 4<sup>th</sup> June 2015, the Competent Authority is pleased to reinstate Ms. Rushda Habib, Lecturer in Zoology (BPS-17), Govt. Girls Degree College, Sheikh Maltoon, Mardan in Government Service for the purpose of inquiry conducting against her under the (Efficiency & Discipline) Rules, 2011.

SECRETARY TO  
GOVT. OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION DEPARTMENT

**Endst: No. & Date Even**

Copy forwarded to the:-

1. Secretary Establishment Department, Khyber Pakhtunkhwa.
2. Director, Higher Education, Khyber Pakhtunkhwa Peshawar.
3. Principal, Govt. Girls Degree College, Sheikh Maltoon, Mardan.
4. District Accounts Officer, Mardan.
5. Lady Concerned,

Postal Address: Rushda Habib, D/O Habib Ur Rahman, House # R-239 Eid Gah Attock.

**(SHAZIA KHAN)**

o/c Section Officer (Colleges-III)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**CoC No. 237/2018**

**Service Appeal No. 717/2017**

**Rushda Habib.....Appellant**

**Versus**

**Govt. of Khyber Pakhtunkhwa**

**Through Chief Secretary & Secretary, Director**

**Higher Education, Archives & Libraries Department & Others.....Respondents**

**AFFIDAVIT**

I, Abrar Ali, Assistant Director (Litigation), Higher Education, Archives & Libraries Department, Government of Khyber Pakhtunkhwa, do hereby declare and affirm on oath, that the contents of the reply of the contempt of court is correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.



**Deponent**

**CNIC No. 16202-4607327-7**

**REGISTERED**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES &  
LIBRARIES DEPARTMENT**

Dated Peshawar, 06<sup>th</sup> April, 2018

**NOTIFICATION**

**No. SO(C-III)HE/1-2/09/Rushda Habib/.** In pursuance of Service Tribunal Judgement dated 10.11.2017, Ms. Rushda Habib, Lecturer in Zoology (BPS-17), Higher Education Department is re-instated into Government Service with effect from the date of her removal i.e. 04.06.2015 subject to final order of the Supreme Court of Pakistan on the CPLA filed by the Govt. of Khyber Pakhtunkhwa, Higher Education Department.

SECRETARY TO  
GOVT. OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION DEPARTMENT

**Endst: No. & Date Even**

Copy forwarded to the:-

1. Director, Higher Education, Khyber Pakhtunkhwa Peshawar.
2. Deputy Director HEMIS Cell Higher Education Department.
3. Officer Concerned,

**Postal Address:** House No. 16, Professors Colony, Toru road near Sheikh Maltoon, Garden Campus, Abdul Wali Khan, University Mardan.

**(TAHIR KHAN)**  
Section Officer (Colleges-III)